Q. In respect to that type of transportation, would you agree that Rule 2 (c) may not be applicable or appropriate?

A. It might not be, or it might have no effect. I am not sure which.

Q. In that type of transportation, anyway, if the compensation is predicated on a percentage of the mileage rate, you would not find it subject to criticism?

A. I am not sure of that, but if on a mileage rate and [fol. 1241] the mileage rate is a percentage of the filed mileage rate, I don't think there would be any criticism.

Q. Then under those circumstances, compensation based on a percentage of the revenue, because it would have been the same effect, would not be criticized by you?

A. Well, of course, I can't say whether it would be criticized by the Commission, but I don't at present see that this particular rule you are talking about would be affected under those circumstances.

Q. Well, if the circumstances are as I have indicated, would you not then support a proposal to have Rule 2 (c) made not applicable to tank truck transportation where the tank truck leasing compensation is based on a mileage basis?

A. I am not going to make any recommendation in this proceeding.

Q. Have you any opinion as to—your personal opinion—having Rule C made not applicable to such circumstances?

A. No, I don't, because I have not given any consideration to that. In putting that rule in, I didn't have in mind tank truck transportation where the rule is mileage rates.

Exam. Lawton: I would like to state at this point that I hope that the parties will develop evidence as to the different methods of compensation, for the record, in connection with leased equipment.

Mr. Burton K. Wheeler: I just want to ask one question.

[fol. 1242] By Mr. Burton K. Wheeler:

Q. Do you know whether or not a charge on basis of a percentage of the revenue encourages driving for a time without rest in excess of ten hours?

A. Only to the same extent that paying on a flat basis

does. When a man is paid $50.00, or $75.00 for a trip, or paid a percentage of the revenue, there is encouragement for excess hours if the distance is great.

By Mr. Eisen:

Q. Now, will you refer to Page 5 of your prepared statement, Mr. Blanning, please?

A. Yes.

Q. You refer to instances where subsidiary or affiliated companies purchase motor vehicles and lease them back to the carriers at rentals which exceed the costs which the carriers themselves would have had if the vehicles were owned by the operating carriers?

A. That is right.

Q. Have you made any study to determine in such instances whether the carriers are leasing the equipment from subsidiary or affiliated companies, at costs in excess of or less than the costs would be if they leased them from other subsidiary or affiliated companies?

A. No.

Q. How can you say that the practice of leasing from subsidiary or affiliated companies at amounts in excess of what the operation of the vehicle by the carrier would be [fol. 1243] if the carrier owned the vehicle, would distort the operating ratios?

A. When we have an instance—and this is not exceptional—where a carrier has owned its own vehicles and maintained them, and carries depreciation on them, and then transfers them to a subsidiary and rents them back, and the rentals amount to ten times the amount that would have been included in their expense account, we figure that the operaring ratio is distorted. And we have had a number of instances of that.

Q. Let's take that same carrier, who instead of selling the equipment to an affiliate, sells them in the open market and disposes of the equipment entirely——

A. Yes.

Q. —and then proceeds to rent or lease equipment at—I will not use your figure of ten times the cost—but at eleven times the cost, because that is the prevailing lease

rental, would you say that practice distorts the operating ratio of carriers?

A. Oh, yes.

Q. Then are you prepared to state whether or not lease of equipment by carriers distorts as a general proposition, the operating ratios of carriers?

A. Oh, yes.

Q. They do?

A. They do.

I might state in connection with that, that in all of our cost studies made up to the present time by the Bureau of [fol. 1244] Accounts and Cost Finding, and previously the Bureau of Statistics, in arriving at an operating ratio for consideration by the Commission in determining the rate level, we exclude those companies which are predominately users of leased equipment, because their operating ratios are of practically no value in a study of that kind.

Q. Do I understand that you would be willing to testify from your experience, you find that carriers that lease equipment pay more costly sums therefor than if they owned and operated their own units?

A. No, I don't know. I have no figures on that.

Exam. Lawton: Have you ever found that the reverse of that situation is true and that an individual carrier understates its operating expenses by using leased equipment?

The Witness: I don't know of any instance when we have had experience of one carrier doing both, at different times, that there was an understatement when it was using leased equipment.

Exam. Lawton: It is usually the other way around?

The Witness: In every case I know of, the cost went up; that is, the amount charged to rental or purchased transportation, or whatever account it is supposed to be, increased above what it had cost them to maintain those vehicles, including depreciation prior to the transfer of those vehicles to a subsidiary.

[fol. 1245] Exam. Lawton: Now take the use of owner-operator on fixed percentage of revenue, or flat basis. In

that case, his operating ratio would be lower than in the case where he owned the equipment?

The Witness: I have no way of knowing that, because where a carrier does both, that is, owns its own equipment and purchases transportation, there is nothing in the system of accounts which permits a set-up that would let us judge that, because that type of carrier most frequently is one who owns the equipment he uses most of the time, and leases the equipment he uses only part-time.

It is possible, if he owned the equipment and used it only part-time, his operating expenses might go above his cost of rentals. We have no such figures, and so far as I know, costs are not set-up by which we could make a determination of that.

By Mr. Eisen:

Q. Do you have any experience whereby a carrier operating through the medium of leased equipment discontinued leasing equipment and put on his own units?

A. Oh, yes.

Q. What was the result there with regard to his operating cost? Did they go up or down?

A. I don't know that I ever made a study of one of those.

Q. Then will you explain your statement that it distorts the operating ratio picture?

A. It could be up or down. In the case where it is done [fol. 1246] through subsidiaries, the experience on those we have studied has been that it has been distorted upward, that is, the costs have been greater than they had previously been with owned equipment. I think that is true. I know it is true of every case that has been called to my attention.

In the case of a carrier who has been leasing equipment and then bought his own, I haven't looked to see what it did to the operating ratio, and the reason I have never got around to it, I assumed the operator was saving money by doing it.

Q. Then you are not in a position to say whether or not the leasing of equipment increases or decreases the operator's costs?

A. Oh, no.

Q. Do you recognize that in a substantial portion of the country, and a substantial portion of the time, there is an uneven or unbalanced flow of traffic?

A. There is generally in some regions, and then there are some regions where for the majority of carriers, the general flow of traffic is in balance.

Q. Due to seasonal production and things of that sort?

A. Due to poor salesmanship also on the part of some companies.

Q. Do you recognize that there are seasonal products that move one way during certain seasons of the year and cause an over-balance of tonnage?

A. Yes.

[fol. 1247] Q. And that there are peak periods of production in the industry that cause an over-balance of traffic?

A. Yes.

Q. So you do recognize that the over-balance or uneven flow of traffic may be due to conditions beyond the control of the carrier?

A. Yes, both seasonal and generally. For instance, out at Chicago, which is a distributing point, there is always more freight moving out than moving in.

Q. So that the uneven balance isn't due to superior or inferior salesmanship?

A. As to individual companies, in general, it isn't.

Q. Do you recognize that the unbalanced movement is taken care of in a large part by through lease, or round-trip or more permanent forms of lease arrangements?

A. I believe generally by trip leases.

Q. By some form of lease arrangement, that situation *is* taken care of.

A. I don't know if "taken care of" is the word, but carriers do avoid the coming back empty and still get the revenue on the outbound movement, by leasing equipment.

Q. Do you think that the shipping public benefits by virtue of the carriers being able to augment their equipment by trip leases and other lease arrangements to provide extra one-way transportation where there is a need for it?

[fol. 1248] A. I am in doubt about it, but I hope to have a better idea about it by the time this hearing is over.

Q. Do I understand that you would advocate, in lieu of leasing, that all carriers equip themselves with sufficient equipment to take care of any peak period, seasonal period, or off-balance period?

A. Oh, no. If I had advocated that, I would have recommended the adoption of the first of the proposals.

Q. Then what do you mean by your previous answer that you didn't think the leasing arrangement was beneficial to the public?

A. I didn't mean that it wasn't of benefit. I said that I am not sure that the benefits of the leasing arrangements—and there are benefits—outweigh the disadvantages of contractors having freight moved in vehicles and by persons who have the movement under practical control who have never received authority to handle it.

Q. Would you agree that in order for the unbalanced traffic movement to remain on the motor vehicles, that it is necessary for the operators to acquire or buy sufficient equipment or lease sufficient equipment?

A. No, I don't think that necessarily follows.

Q. How would they move the off-balance movement if they didn't have the equipment to meet the peak flow?

A. The reason I am uncertain of what is beneficial, is this: There is a large movement, as I mentioned before, of [fol. 1249] fruit out of Florida to the northern states, fruits and vegetables. They are hauled by certain carriers, exempt and private. There is a large movement of general freight back into that territory. That is hauled under the operating rights of carriers holding certificates from us.

I am not sure that the proper answer to that unbalance is for the authorized carriers to lease the trucks, to have the general freight hauled in the trucks of the persons who haul fruit. I am not sure that the traffic in both directions could not be handled by carriers authorized to handle that transportation.

Q. You advocate the carriers who provide general transportation to the southern areas have sufficient equipment to take care of the southbound transportation, irrespective of the fact that they may not have sufficient freight offered

from the south to constitute a loaded return movement?

A. No, I said I think that would be the proper answer if there is sufficient freight coming north to fill those vehicles, as there is in this particular instance.

Q. Do you believe that in every instance where you have peak movements, there is sufficient freight to cause the traffic to be loaded both ways, or keep the actual amount of units occupied for twelve months of the year?

A. No, but generally where there is not, there are no vehicles available for trip leases. Unless there is freight [fol. 1250] coming into industrial centers, the vehicles are not going to be in there to be leased on the way back.

Q. Let's take a situation of a carrier operating between A and B, and during the summer months at point A there is a substantial production of a liquid, we will say, that moves into Point B.

A. Yes.

Q. That is an abnormal movement that occurs only during the summer months—say it is beer, or soda pop, or anything you will—and that abnormal movement, particularly during the summer months, off-balances the carrier's operations.

Now, would you say that that carrier operating between Points A and B should have in his own fleet, sufficient equipment at all times to meet that summer contingency?

A. I would have to know more about the situation. If you are implying that there are vehicles there that come into the city with freight and would be willing to haul that back——

Q. I am implying that.

A. Then it seems to me that the proper method to handle that is for that freight to be handled by the authorized carrier who hauls it back.

Q. I am speaking of an exempted commodity.

A. The fact that it is exempt doesn't change my understanding as to who should carry it.

Q. As I understand you, then, you feel that each carrier [fol. 1251] should maintain sufficient equipment in his fleet to handle the movements at all times, regardless of the unbalance or seasonal volume.

A. No. As I said before, I am not advocating anything, and I am not satisfied in my own mind as to what the proper

handling of this question of unbalance, which is nearly always an unbalance in opposite directions by two different persons.

Q. Let us go back to the example I just propounded between Points A and B. Do you believe that the authorized carrier should not make provision through the acquisition of equipment for the abnormal summer time movement between Point A and B?

A. That I am not sure of. I would want to know more about the situation.

Q. If the carrier did not make such provision, would you then advocate that the Commission certificate additional carriers to take care of that abnormal situation in that circumstance?

A. You mean in a situation where——

Q. Where there is an abnormal movement of freight moving from Point A to B during one particular period of three months, and not sufficient freight coming from B back to A to counterbalance that move; you said you would not say that the carrier should not equip himself with enough equipment to move it during the peak period and then keep his fleet idle all year.

I then asked you if you would advocate that the Commission certificate additional carriers because of the short-
[fol. 1252] age during the peak period.

A. You mean to haul during the peak period?

Q. Well, to furnish transportation during the peak period, whether the carrier be restricted to that peak period or otherwise, I will leave to your own judgment.

A. If the Commission should adopt regulations that would prohibit leasing altogether, the situation during those peak periods is going to change substantially.

Q. In what way?

A. A large number of carriers now hauling exempt commodities into the area from which this commodity is going to return, cannot afford to run empty. They only run in there now because they can get a return haul from another carrier. If they can't get that return haul, the situation is going to change. To what extent it is going to change, I don't know, and whether it would change enough that the carrier could afford to put his own vehicles on, I don't know.

Q. Let us assume a situation where the vehicles used for return haul are private vehicles.

A. The same thing is true.

Q. You believe that if the return load were not to be had, that the industry would discontinue its one-way hauling?

A. A good many would. A good many of them have told me they are not going to begin unless they can legally lease their trucks for the back haul.

[fol. 1253] Q. Then you don't believe that the elimination of leasing would curtail the number of motor truck units available to the public for interstate transportation?

A. Of that I don't know, as to the number.

Q. Would you admit that it would eliminate certain of the equipment now available to the public?

A. Of the individual pieces or the amount of equipment?

Q. Either or both. Give me both.

A. It would probably eliminate some pieces—that is, some pieces of equipment now engaged in doing some hauling would no longer be engaged in doing that particular hauling. If regulations were adopted that prohibited leasing altogether, there would be a period of adjustment, both as to the operation of the industry and as to the rights they hold. After that adjustment period, I believe the same amount of freight would be transported and sufficient vehicles would be available to handle it, even under a regulation of the type I mentioned.

Q. After that adjustment period, do you contemplate that the existing carriers would have augmented their fleets by purchasing equipment?

A. I would imagine so. That is, some of them.

Q. Don't you believe that under that situation, only the more wealthy carriers would be in the position so to do and that would have a tendency toward monopoly in the motor transportation industry?

[fol. 1254] A. That hasn't been our experience; that the only ones who were able to add to their equipment are the wealthy.

Q. Well, you haven't had any experience under the no leasing rule.

A. No, but we have had a long experience of carriers building up fleets of equipment who are not wealthy.

Q. But that is over a long period of time, not over the period such as you are speaking about.

A. The period I am talking about has not yet occurred.

Q. That is right. Do you believe that the transition period would extend over many, many years?

A. I believe not.

Q. Then the additional equipment would have to be developed in a short period of time?

A. That is right.

Q. Don't you think that only the more wealthy carriers would be in a position to do that?

A. No.

Q. Can you tell us, in Exhibit No. 2, whether any of the criticisms therein apply to so-called automobile carriers?

A. I don't recall whether any of those instances—yes, there are two of them, I believe, in there that specifically apply to automobile carriers. There is one in there, I don't remember the number, but you may recognize it. It is an automobile hauler who had been running south of Louisville on leased rights and was later discontinued and [fol. 1255] the service was unavailable afterwards.

Q. Was that an automobile carrier?

A. An automobile carrier.

Q. Would that be No. 1 between Chicago and Louisville?

A. No. I think it is——

Exam. Lawton: Is that important?

The Witness: I can't find it readily, but there is an instance, and I think it is in here, specifically referring to an automobile carrier which had arrangements with a connecting carrier, by which the trucks of one carrier ran through over the joint route, and later that carrier needed its equipment for a more profitable run, and there was no service beyond the connecting point any longer available, because he took his vehicles off. I think you will find it in there somewhere, but I don't recall the individual case now.

By Mr. Eisen:

Q. I don't want to take time to look for it. I don't recall it, but if I do find it, I would like to reserve the right to ask a question about it.

Exam. Lawton: Does that complete your cross examination?

Mr. Eisen: Yes sir.

Exam. Lawton: Any cross on behalf of any other motor carrier?

Mr. Allison: Yes sir.

Cross examination.

[fol. 1256] By Mr. Allison:

Q. Mr. Blanning, is it not a fact that there are carriers certificated by this Commission which are also intra-state carriers?

A. Oh, yes.

Q. Those carriers are subject to regulations by state commissions, are they not?

A. In most states.

Q. Is it not a fact, within your knowledge, that those carriers operate between fixed terminals, over fixed routes and on fixed time schedules?

A. Well, if you mean fixed by the state, I think there is only one state that does that.

Q. Are you also aware that there are states which impose a mileage tax on motor freight common carriers of commodities which do not impose the same tax on haulers of agricultural products?

A. That is right.

Q. Do you not then agree that there would be a substantial policing problem if the common carrier attempted to back-haul the agricultural commodities?

A. I don't think so.

Q. He would use the same vehicles, we will assume, which are required to be paointed with all of the insignia and the number she holds.

Don't you think that the shipping public would be a [fol. 1257] little confused if those trucks at certain times of the day would stop for freight and the other times would pass them by, because they would be hauling in the opposite direction exempt commodities?

A. You are from Florida?

Q. Yes.

A. You have a peculiar problem down there due to the fact that your state commission fixes the time schedules. That is the only state in the country where that applies, and I haven't given consideration to what effect that particular state would have on hauling back out of Florida.

Q. You do concede the substantial problem we have if we are hauling exempted commodities in one direction and general commodities in the other?

A. I am not familiar with the law. I concede there is a problem you would have different from any other state.

Q. One further question: Assuming the adoption of your suggestion of the remedy that the common carriers provide themselves with enough equipment to haul the agricultural products as well as the general commodities, and the period of unbalance is six months, and that additional equipment remains idle for the remaining six months; don't you think it would be a natural consequence there would be either an increased charge for transporting the agricultural product, or an application for a rate increase on the other commodities?

A. Well, if it were true, although the northbound move- [fol. 1258] ment of agricultural commodities is a six-months movement as I understand, the southbound movement of general commodities is general throughout the year, although there are peaks.

Q. But the cost of additional equipment must be met from somewhere.

A. That is right.

Q. We all know, I think, the operating ratios of the general carriers. So, somebody has to provide the money, isn't that the problem?

A. That is right.

Q. Also, isn't it true in this peculiar instance this movement of the fruit and vegetables leads largely to northern points not served by any of the carriers in Florida?

A. Well, no. You have a couple of carriers that have rights and run to the north out of Florida, although they don't have rights all the way down into the citrus belt.

Q. Correct. They don't reach down into the section where the agricultural products are produced.

A. Yes.

Q. So we would have the problem then of the common carrier hauling the exempted commodity off of his regular route and then returning empty possibly five or six hundred miles to get to a terminal on his regular route as a general carrier of commodities.

A. I don't think that is right. You are going on the [fol. 1259] possibility of leasing being prohibited altogether.

Q. Yes.

A. And I said if the Commission should adopt such a regulation as that, that no leasing at all would be permitted, then there would be a period of adjustment involved which might involve some adjustment of rights. Your situation is extreme, but to a lesser degree, it might occur in other places.

Exam. Lawton: Do you believe that the Commission could eliminate leasing entirely?

The Witness: It is in the order as one of the matters for consideration, the opinion on which these regulations and the order was drafted, that the Commission could adopt any regulations that were necessary to correct an abuse. If the abuse is of sufficient seriousness to justify as drastic a regulation at all, and if the courts agreed that it was of such seriousness, I believe then it would be in the power of the Commission to do it.

When I say I believe it, that was the theory on which the order was issued. I am not giving any legal opinion on that from the witness stand.

Q. One further question and then I am through. Assuming that the Commission's records show that certain carriers in a certain area are getting just enough to get by, would you think it would be cured by your suggestion that you certificate an additional number to cover the period of [fol. 1260] unbalance. And then, of course, they would continue through the rest of the year to compete for their traffic.

A. I didn't make a suggestion of that kind.

Q. I understood that was one of the comments you made to a question on cross examination.

A. No, I think that was one of the questions. I haven't suggested that the Commission should certificate enough people to take care of a peak load and give them rights to last through the entire year because the first carrier can't have enough equipment to take care of the peak load.

Q. Do you care to express an opinion on that?

A. No, because it would depend entirely on the circumstances. I think I can conceive of situations where a carrier should have enough equipment to take care of his peak business, without that being generally true.

Q. Thank you.

Mr. Idol: Mr. Examiner, I have one very short point I would like to cover.

By Mr. Idol:

Q. Your Exhibit 3 has some columns devoted to local carriers—I am not going into any of the figures.

A. Yes.

Q. I didn't notice anything in Exhibit 2 which covers abuses within municipal areas, where their operations are wholly within municipal areas.

A. We didn't because the regulations are not aimed at [fol. 1261] exempt carriers. Operators in municipal zones not operating outside are not regulated by the Commission and not covered by the proposed regulations.

Q. They would not be covered by the proposed regulations?

A. Not carriers that are exempt.

Q. How about operations by line haul carriers, we will say pick up and deliver services, where the operations are conducted wholly within municipal areas. Have you found any leasing practices there?

A. I don't recall any.

Exam. Lawton: Mr. Wells.

Mr. Wells: I represent the Florida Citrus Commission and Shippers League of Florida.

Cross examination.

By Mr. Wells:

Q. You have referred to the fact that there is a considerable movement out of Florida to interstate destinations, both of citrus and vegetables.

A. Yes.

Q. In what type of equipment does that movement take place?

A. I am not sure, and I believe that is different, except that it is the same truck that hauls general commodities outbound under lease.

Q. Generally speaking, the outbound movement of the perishable commodities is in private trucks or in exempt trucks, isn't it?

A. I believe so.

[fol. 1262] Q. And a very small part moves by such carriers as, for example, McDowell's Transport?

A. That is right.

Q. Which is certificated by this Commission?

A. I don't recall the company, but I will take your word for it.

Q. That movement from Florida of perishable commodities, citrus and vegetables, goes pretty nearly all over the eastern part of the United States, doesn't it; Vermont, Wisconsin, Missouri, Nebraska, Illinois, and the southeastern states as well?

A. I am most familiar with it along the Atlantic seaboard, although we have some going to Chicago.

Q. Along the Atlantic coast, have you run across it to Massachusetts, New England states, and——

A. New York and Connecticut. Whether it goes north of Connecticut, I don't recall at present. I don't mean that it doesn't, but not in the cases called to my attention.

Q. Now, in the movement of those perishable commodities, isn't there sometimes a considerable amount of refrigeration furnished by the particular type of truck that engages in that movement?

A. It is my impression that the biggest majority comes up under refrigeration. There are some private carriers

that run under refrigeration, but I have no figures on that because they are not subject to our jurisdiction.

[fol. 1263] Q. At any rate, there are some of those carriers involved in that particular movement?

A. That is right.

Q. Are any of those included in Table VI of your Exhibit 3?

A. If any of them were stopped on the highway during that period, they are, yes.

Q. In which category did they come—the for-hire owned or leased, or the private-owned or leased?

A. We did put in this exhibit—I'm sorry, I am not definite on that now—if they were private carriers, they are under "private".

Q. If they are exempt——

A. If they are all for-hire, I am not sure which they are in, whether they are under private or for-hire.

Q. I wasn't sure that I understood whether the for-hire figures listed on Table VI included only those having certificates or permits from the Commission, or whether it might also include some exempt carriers hauling only exempt commodities.

A. I should know that, because we decided what to do about this when we made the exhibit. If you don't mind, I would like to put that in the record tomorrow morning. It has slipped my mind what we did on that.

Q. That will be perfectly all right.

Do you know, or do you agree that the practice you have referred to of some of the northbound exempt carriers [fol. 1264] leasing the equipment for a southbound movement from motor carriers is an efficient and economic use of those transportation facilities?

A. It does as compared with both of them running in opposite directions empty, yes.

Q. Now, do you know of any considerable movement of fruit and vegetables out of Florida by common carrier or contract carrier, or that could move by any such form?

A. Oh, yes. I think all of it—I don't know of any substantial movement going on.

Q. Will you explain how it could move?

A. Don't know, except that it is moving out of the Rio Grande Valley.

Q. I am speaking out of Florida.

A. I don't know enough of the details of the situation to know why it would be different.

Q. As a matter of fact, it was pointed out there isn't even any route to or from the citrus producing and vegetable producing areas in Florida.

A. You mean by authorized carriers?

Q. Yes.

A. Not that run all the way through. There is only by interchange at Jacksonville or Atlanta.

Q. Do you think it would be practical to interchange, that is, to unload from one motor vehicle and load unto [fol. 1265] another, once or twice or more times, perishable commodities like beans, for example?

A. Oh, no.

Q. That would be wholly impractical, wouldn't it?

A. Yes.

Mr. Wells: Thank you.

Exam. Lawton: Are there any further questions of Mr. Blanning?

Mr. Todd: Mr. Examiner, I am going to have some questions of Mr. Blanning, but I wonder if they could be deferred until tomorrow morning?

Exam. Lawton: Yes.

Anyone else?

Cross-examination:

By Mr. McAuliffe:

Q. Mr. Blanning, I represent a group of shippers, and our only interest in this proceeding is that the Commission adopt no unnecessary restrictions on common or contract carriers that would increase the cost to the shipper; also that the Commission adopt no restrictions of common and contract carriers beyond its jurisdiction.

Do you think we have assumed the correct position?

A. That is right.

Q. Am I correct in summing up your presentation here,

that your Bureau, including your field staff and yourself, have acted as a clearing house in the assembling of these [fol. 1266] rules, rather than as the proponent of these specific rules?

A. That is right.

Q. Now, do you have something to do with the drafting of this particular order?

A. Yes.

Q. You are familiar with it?

A. With the drafting of the regulations themselves. The order was drafted in the regular section.

Q. Are you in a position to say whether the sections of the act cited near the head of that order of January 9, 1948 are the authority for the order and investigation?

A. As I didn't draft that part, I don't know, but I assume that was the authority on which the order was issued.

Q. Yes. Now, did anyone inside the Commission ask you to draft up these regulations, or did you determine to draft them up yourself?

A. As to these particular regulations, I drafted them on my own initiative. As to the drafting of a set of regulations, that has been at the insistence of the Commission over a period of time, who have been asking me when I was going to do something about these situations that were appearing in formal cases and otherwise reaching their attention.

Q. I believe you have said that motor carriers have asked that something be done, such as these regulations.

A. Something be done, and some of them as to each of [fol. 1267] these regulations, yes.

Q. Some motor carriers asked for each and every one of these regulations?

A. I don't know whether "asked" is the word. The principal way they started out was that we should give a definition of leasing and draw up a lease form that somehow they thought by some abracadabra would stop all illegality. But the proposal to both abolish leasing altogether and put the restrictions on these, both came from carriers.

Q. Have any shippers asked you for any regulations of this sort?

A. I believe not, except that we have had numerous requests from shippers as to clarification of the conditions under which they can use leased vehicles.

Q. Now, this leasing has been going on for a long time, has it not; since before regulations?

A. Since before regulations, yes.

Q. And do you think that the absence of shipper requests for some action on that matter over that long period of time would indicate they are more or less satisfied with the situation?

A. I wouldn't know. The shippers don't contact us to the same extent that motor carriers do.

Q. Now, the word "undesirable" has been used a lot in the testimony and examination today. Do you think that the Interstate Commerce Act authorizes this Com-[fol. 1268] mission to remove all undesirable characteristics of motor carrier transportation?

A. No.

Q. They have to have some authority under this act to do anything, don't they?

A. I would think so.

Q. Now, you said on the stand, I believe, that you are trained in law, Mr. Blanning. Would you say that aside from these exhibits that are not yet in evidence, that you have offered a proper and material evidence to sustain these particular regulations we have here before us today?

A. I don't know whether the evidence that is now in would be sufficient to sustain each of the proposed rules. I don't say it wouldn't be, but as they were drafted at different times, they were not drafted with the intention of finding some practice which would justify a particular rule.

We sent out and asked for the undesirable practices and they were compiled. We then compiled a set of rules that different people suggested, and I haven't checked to see if they match against each other.

Q. Did you check those undesirable practices against the

powers of the Commission under the Interstate Commerce Act?

A. No, I didn't.

Q. You did not?

A. No, I didn't.

Q. Did you have a number of other suggestions as to [fol. 1269] particular regulations in addition to those we have in this order here today?

A. I think so. I think there were under the different drafts that have been made, there were a number of things that are not in here.

Q. You know that is true, of course, don't you? You have handled this matter from the top.

A. We did have suggestions for additions and subtractions for each of the drafts that we made.

Q. How did you come to the conclusion that this was the draft that should be before the Commission here today?

A. You are speaking of the one in which trip leasing is permitted——

Q. I am speaking of the draft in the order.

A. I am apparently the only person here who realizes the fact that there are four proposals before the Commission. One provides for unlimited trip leases under certain conditions.

I presume that is the one you are referring to.

Q. Well, let's get together on how many propositions are before the Commission. Maybe I am the one who is wrong. You have A, B, C, and D?

A. That is right.

Q. And then you have rules proposed for regulations?

A. That is right.

Q. You said in your testimony that you didn't recommend [fol. 1270] any of the four things, one of which was prohibition of the use of vehicles not owned or held under long-term lease, but you have arranged to put all four of them into this order.

A. That is right.

Q. Well, I am talking particularly about—and asking how you came to pick out certain particular provisi-ns in

the order—the fourth part. I wish you would make that clear.

A. Well, there were two reasons for the draft as now prepared. One was that of all of the drafts that were before us and commented upon, this most definitely controlled the use of the leased vehicle or put it in control of the carrier, and enabled proof of such control to exist. There was also the fact that if a proposal were made here that would let anybody do what he wanted to do anyhow, nobody would turn up and the Commission would get no evidence as to conditions——

Q. Just a second. I don't want to interrupt you, but your last statement would amount to practically no regulation. I am speaking of the fourth alternative in this order.

A. Take the one as to whether or not the driver must be an employee of the carrier. There was considerable comment as to members of our staff and members of the industry as to whether that should be required. It was not that if we didn't put that in, there would be no evidence on that subject offered at this hearing.

If we put in the requirement that the driver had to be an [fol. 1271] employee, if he didn't use an owner-driver otherwise, those who would be hurt by any such regulation would be more likely to come here and present evidence of how they would be hurt, so the Commission would have that before it.

Several of the rules that were put in there, where it came to a question of whether to put it in or not, among the various objections, were put in because to put them in would encourage evidence to be offered at this hearing, and to leave them out would not.

Q. Well, would it be fair to state in the vernacular, that the notice of proposed rule making contains trial balloons, or talking horses to bring out evidence from other people?

A. I think what you have in mind is correct. That is, I do not and have not recommended approval of every one of these regulations and some of the things in there are for the purpose of bringing evidence before the Commission

from which it could judge the relative evil of putting in the rule as against the abuse that would exist without the rule.

Mr. McAuliffe: I believe that is all.

Cross-examination.

By Mr. Kirtsinger:

Q. Mr. Blanning, you have gone around all over the country, during which you consulted with the oil field haulers and pipeline stringers, and are familiar with the type of operation those people are engaged in?

A. Yes.

[fol. 1272] Q. Did you take into consideration when you were considering this proposal, or these proposed rules here, the operations of those carriers and how they might be affected by Rule "A", the renting of vehicles, and so forth, with or without drivers should be limited to long-term leases?

A. I answered your previous question "yes." I would like to say that since these regulations have been put out, I have learned for the first time of extensive leasing of vehicles by oil field haulers, both where they take vehicles under their control and use them on their own work, and where they operate their vehicles on somebody else's bills without anybody of the certificated carrier being in the vicinity.

Both of these practices were new to me, and when I made my study of the oil field situation, if they existed, I hadn't heard of them.

Q. I notice you have some examples set forth in Exhibit 2 having to do with those practices by the oil field haulers, such as Cox, Packhill, Dunn, and Vanderbeer, four separate carriers, they all own a large amount of specialized equipment, isn't that right?

A. Yes.

Q. In your various conferences with the carriers over the years, did you find that they have seldom found it necessary to lease equipment on a long-term basis?

A. I don't know. As I say, until recently I didn't know

[fol. 1273] that they leased equipment at all. It had been my impression that those four carriers you are talking about took business and handled it with their own equipment, and during such times as their equipment was tied up, they didn't go after jobs and the other carriers got them.

Now, that, I understand, is not true, and maybe it is not, but if it wasn't true, I don't know it.

Q. When they are on the job—you understand that pipeline stringing is done under contract?

A. Yes.

Q. It is a spasmodic operation; whenever they get a job, their equipment is busy.

A. Yes.

Q. There are times when they are on the job they will run short of a truck or two, or some of their equipment will break down and it will be necessary for them to rent or lease a truck for a day, two days, or a week?

A. Yes.

Q. Now, under a long-term lease, you can easily realize how they would be affected?

A. Yes.

Q. Did you consider those problems in arriving at your rules?

A. No. I didn't consider them primarily because I didn't know they existed in the oil field industry, but that particular problem might be or could be met by the fourth of the [fol. 1274] proposals where short-term leases are possible under conditions which put the control of the vehicle in the hands of the certificated carriers.

Q. A short-term lease in the fourth proposal is 108 days.

A. Oh, no. In the fourth proposal, which are the rules attached to the order, there is no time limit as to the rental of equipment—oh, you are referring to rental from one carrier to another?

Q. One carrier to another, or from one——

A. No, there is no limit on that. The restriction is only on leasing to shippers.

Q. Is it possible that there could be some compensation for operations of that kind?

A. Compensation from what?

Q. From any one of these rules.

A. It is possible. I don't know why there should be, but that is what the hearing is for.

Exam. Lawton: It seems to me a lot of these questions are directed to problems of special types of carriers and that the facts with respect to those carriers could best be developed by affirmative evidence that is in the possession of the carriers.

Mr. Kirtsinger: We are going to request an opportunity to put that type of evidence in at a different place in the hearing.

[fol. 1275] Exam. Lawton: Do you have any further questions?

Mr. Kirtsinger: No sir.

Exam. Lawton: Does anyone else have any questions?

Mr. Fagg: I would like to ask a question.

Cross-examination.

By Mr. Fagg:

Q. In speaking about whole or part-leasing arrangements, in your opinion, will the elimination of leasing arrangements increase or decrease operation ratio?

Exam. Lawton: We have already gone into that subject.

Mr. Fagg: He didn't answer that question, sir.

The Witness: I don't know whether it would or not. It would be different with different carriers.

By Mr. Fagg:

Q. Do you know?

A. No.

Exam. Lawton: Mr. Schatt.

Mr. Schatt: I represent shippers.

Cross-examination.

By Mr. Schatt:

Q. Has the Commission received many complaints of shippers not receiving motor carrier service?

A. Yes.

Q. If these rules took effect, would that increase the possibility of shippers receiving poor service?

A. I would think not. It depends on which rules went in whether there would be a period of adjustment or not, but there would be no reason that shippers should not receive [fol. 1276] just as good service under these rules after the carriers had adjusted themselves to the rules.

Q. But if we should run into a period of poor service, do you think that the shippers should wait for a period of adjustment to see how the rules would work?

A. I don't quite get the situation you are thinking of.

Q. You admit that the Commission now is receiving complaints of poor service. Now, do you also receive complaints of hand picking of freight from shippers?

A. That is right.

Q. Doesn't some of this type of movement that is being criticized here so much take up some of those movements, or maybe be responsible for some of those movements?

A. You mean for the picking of freight, or not picking of freight?

Q. Both. Picking of certain movements, and not picking of certain freight movements.

A. I don't see that leasing affects that. Of course, some freight is being handled in leased vehicles, and the shippers would not get the service if the carriers quit leasing and didn't take some other means of handling the freight.

Q. If you didn't have leasing arrangements, you would get poorer service than you are getting now?

A. I don't know, because it would depend on what the carriers would do to adjust themselves to the new regulations

[fol. 1277] But there is a possibility of poorer service?

A. I wouldn't think so.

Q. Well, where would they get the equipment to furnish the service?

A. That would depend on what the regulations are. The equipment is here now, and being used now, and it is a question of who will own it; or if it is leased, under what conditions would it be leased.

Exam. Lawton: Any other questions?

Cross-examination.

By Mr. Driscoll:

Q. There is one suggestion that a carrier should not be permitted to lease all of its equipment.

A. That is right.

Q. Do you have any idea of what that percentage should be, or——

A. No. That was put in because there are a number of carriers who believe that a motor carrier should be a substantial carrier having equipment, and that people having nothing but a telephone should not be allowed to have certificates and be competitive with them.

Q. Are you familiar with the operations of the Grey Van Lines Corporation?

A. Fairly familiar.

Q. Would you call them substantial?

A. I don't know enough about that. They do a lot of business, if that is what you mean.

Q. Well, in an ad in the Traffic World for September 25, a [fol. 1278] statement is made that its entire fleet is owner-operated, assuring maximum interest, maximum care by drivers. They say they have company-owned offices in 48 states. So I assume they are a pretty big operator.

A. Yes.

Q. Under one of these suggestions they would have to divest themselves of all of that equipment, wouldn't they?

A. Or purchase it.

Q. And perhaps purchase it at their own price, if all of their owner-operators were forced out of business, wouldn't they?

A. That I don't know.

Q. It is possible that they might be squeezed, isn't it?

A. That I don't know.

Q. Can you think of any good reason why the Grey Van Corporation should not be permitted to continue as it does?

A. I could mention a number of reasons that have been given to me, but I am not expressing any opinion on the desirability of that type of operation at this time.

Q. I don't know that any of these particular owner-

operators are members of the association that I speak for, but it could well be, and if they are not today, they may be tomorrow. So I am merely asking you because that particular subject didn't seem to be discussed round the room before it got around to me.

I wanted to ask you that one thing about limiting the owner in the number of pieces of equipment he could lease. [fol. 1279] Why does he have to own half of it before he could lease some, or why does he have to own 80 per cent before he could lease some? What is the reason back of that suggestion?

A. There are two. One is that there are carriers who have a substantial investment in their business, who feel that they are meeting unfair competition from a carrier who has nothing but a telephone and who makes some profit no matter what rates are charged. That is one reason.

And the other is that a carrier who has his own money invested feels that he is meeting unfair competition from a person all of whose investment is made by his employees, without them having a control over the operation of the business.

Q. You know that there are a number of haulers who lease practically all of their over-the-road equipment?

A. Oh, yes.

Q. And they are substantial?

A. That is a matter that I—I would want to take each carrier before I passed on that.

Q. Well, they have grandfather rights and have been in business for many years.

A. And there are a number of them with large revenues, of that type, yes.

Exam. Lawton: Off the record a moment.

(Discussion off the record.)

Exam. Lawton: We will adjourn until nine o'clock [fols. 1280-1283] tomorrow morning.

(Whereupon, at 4:55 o'clock p.m., the hearing in the above-entitled matter was adjourned until 9:00 o'clock a.m., the following day.)

[fol. 1284] PROCEEDINGS—October 15, 1948

Exam. Lawton: Come to order, please.

We will resume the hearing.

Mr. Blanning will take the stand.

W. Y. BLANNING resumed the stand and testified further as follows:

Exam. Lawton: Have the representatives of the independent motor carriers completed their cross examination? Is there anyone else who wishes to cross examine Mr. Blanning?

Mr. Johnson: I have two or three questions.

Cross-examination.

By Mr. Johnson:

Q. Mr. Blanning, can you tell me with reference to any of the examples of so-called undesirable practices which you have set forth in Exhibit 2, or with reference to any other undesirable practices you may have in mind, why is it necessary to the elimination of those undesirable practices that the proposed regulation should require that the driver of the equipment be an employee of the carrier?

In other words, isn't it possible to eliminate any undesirable practices without putting that requirement into the regulation?

A. I think it would make it much more difficult to control the practices that are in existence and which are considered to be undesirable by some of the staff and some of the carriers unless there is a requirement that the driver be an employee of the person holding the certificate.

[fol. 1285] I understood yesterday that was your position, but I am asking what specific practices you feel that answer applies to. I am trying to drive at what particular practice you think can be eliminated only by requiring the driver to become an employee of the carrier?

A. I think that none of them can be eliminated entirely if the driver is not an employee of the carrier.

Q. I hate to press the point, but that answer doesn't seem to be responsive. It seems to me if that is true you should be able to give me an example of some practice that cannot be eliminated unless the driver is an employee of the carrier.

A. Every one of them that are listed.

Q. Let's talk about hours of service, then. Why is it necessary to the enforcement of the hours of service provisions that the driver should be an employee of the carrier?

A. Where the driver is not an employee of the carrier he can be working for anybody at any time. That is the usual practice in the case of trip leases. He makes out a driver's log for the day that he is working for a particular carrier. If he is working for a different carrier the next day and is not an employee of that carrier, he makes out a driver's log for that person. There is no way to tell at the end of the week by any carrier whether or not he has been violating the hours of service. For us to attempt to go through the records of all of the carriers for whom he worked during a given period in order to determine whether the driver was [fol. 1286] violating the hours of service is an impossible task administratively.

Q. Is it your position, then, that the Commission does not have power to require a carrier to keep those records if the man is not an employee?

A. I don't know what we could do. Our rules do not require that the carrier keep a record of the time that persons work when they are not working for him.

Q. Yes, but is it your position that the Commission does not have the power to make such a regulation?

A. I haven't considered that. Possibly we could make any regulation that is needed in order to carry out the purposes of the Act.

Q. With reference to your answer to my question about records of hours of service, isn't it true that your answer would be equally true so long as trip leasing is permitted because of the fact that the driver would be an employee of the carrier only for the period of the trip?

A. That is right.

Q. So that unless trip leasing is prohibited the same con-

sequence would follow even though the driver would be an employee for the period of the trip?

A. Not the same consequence. There would be difficulty as long as trip leases are permitted, yes.

Q. Practically the same difficulty?

[fol. 1287] A. As to hours of service, you mean?

Q. Yes.

A. It wouldn't be the same because although the rules require that a person, even though not an employee when driving a truck, make out a driver's log and that the carrier keep it, we found in practice a considerable distinction in the practices of those people when they are employees. I don't mean merely put on the payroll, but when they are employees of the carrier and when they are not employees, but what has been called independent contractors.

Q. There is another portion of the proposed rule 2-II, which I would like to ask you about. It says that the wages must be kept separately, or something like that. "The wages of the driver shall be separate and distinct from the charges and use made of the equipment." Which undesirable practice did you have in mind that that is designed to eliminate?

A. The entire practice of using vehicles which are not under the control of the carrier.

Q. I understand that, but is it necessary in your opinion that the technical maneuver of keeping wages separate from other charges has any connection with the question of control?

A. Yes.

Q. Don't you think it is just as possible to have complete control vested in the authorized carrier if the wages are not kept separately?

[fol. 1288] A. It may be possible and I have heard some of the carriers say that they do it. It is not usual. Generally where there is not a bona fide lease and taking control of the vehicle with a rental for the vehicle as such on the payment of a driver as an employee, the general practice has been that there is not the control that there is when a vehicle is owned.

Q. But you would agree with me that there could be

complete control over the vehicle and the service, even though the wages were not kept separately?

A. I think that would be possible, yes.

Q. That is a possibility, in other words?

A. I think so.

Q. One more question. In formulating the proposed set of regulations, was any thought given by you or by anyone else, to your knowledge, to the fact that application of those provisions might make the authorized carrier liable to the owner of the equipment for damage to that equipment? I am ruling out any liability to the public or to the shipper. Did you give any consideration to the fact that these provisions might make the authorized carrier liable for damages to the owner's equipment?

A. Whether or not he is liable for damage to the owner's equipment would depend on the lease arrangement. A number of the leases in existence do provide that the carrier is liable for damage to the equipment.

Q. My point is, it seems to be possible under these regu- [fol. 1289] lations that if the contract complied with this proposal it would necessarily have that effect, that the authorized carrier would become liable to the owner for any damage to his own equipment. I am unable to see why he should not be permitted to remain responsible and protect himself by insurance or otherwise against damage to his own equipment.

A. Whose equipment, the carrier's?

Q. The owner's equipment, the leased equipment.

A. It is a frequent practice that when a carrier takes over under lease a piece of equipment he is liable for any damage that he causes to that equipment while it is under lease to him.

Q. That is correct.

A. Sometimes a good many leases do not contain that provision and provide that the carrier is not liable even though it is his fault.

Q. That is right.

A. There is nothing in these regulations that indicates to me that they can't make such arrangement as they please on that subject.

Q. In other words, you did not consider that factor in drawing these regulations?

A. We didn't consider that the regulations made any provision for payment or non-payment of damage to the equipment that is leased.

Q. I have only one more question and that is this: In [fol. 1290] your opinion and irrespective of the way the regulations refer to a contract or lease arrangement, wouldn't you agree that any contract which complied with the proposed set of regulations would be a lease, irrespective of the language of the regulation?

A. I have been keeping away from the word "lease" because it has different meanings to different people. I am not sure whether these arrangements would necessarily be leases. Some of the arrangements that I thought were leases have been held not to be.

Q. That is correct, but you wouldn't be in a position, then, to say whether or not any contract which complied with these regulations would actually be a lease and nothing else?

A. No, I wouldn't want to. That is a legal question I wouldn't want to pass on now.

Mr. Johnson: Thank you very much.

Exam. Lawton: Is that all, Mr. Johnson?

Mr. Johnson: Yes.

Mr. Pou: Mr. Examiner, may I interrupt just for a moment? Yesterday afternoon someone was inquiring of Mr. Blanning as to Table 6 of Exhibit 3, and particularly as to whether so-called exempt carriers had been listed on that table as "for hire" carriers or as "private" carriers. At that time Mr. Blanning was unable to answer the question, but I understand he is now in possession of that information and can answer the question if the gentleman who was interested in it will pursue it further at this time. I have [fol. 1291] forgotten who it was.

Exam. Lawton: You can just state that for the record.

The Witness: In preparing Table 6 we have two classes, "For hire" and "private" and divided under those, "owned" and "leased" vehicles, showing the safety violations of each class. The wording is not entirely clear. "For hire" there means holding authorization from the Interstate

Commerce Commission. "Private" means any other truck subject to our safety regulations.

So the exempt trucks are listed under "Private", not under "for hire".

Mr. Wells: Then, Mr. Blanning, as I understand, the exempt carriers may be listed under your "private" listing, even though they are hauling for compensation, insofar as Table 6 is concerned?

The Witness: That is right. The wording is misleading. "Private" is not correct. It merely means not holding authority from this Commission.

Exam. Lawton: Who else is ready to cross examine?

Mr. Todd: I am ready, Mr. Examiner, if you are ready to hear from me.

Exam. Lawton: Yes.

Cross-examination.

By Mr. Todd:

Q. Mr. Blanning, during the course of your study of leasing and the various ramifications of that subject, I take it that you have found out that there are a great many different types of leasing that are engaged in by the motor [fol. 1292] carrier industry, is that correct?

A. There are a variety of types of using vehicles not owned by the carrier and sometimes they are referred to as leasing, yes.

Q. I mean, speaking of leasing now, Mr. Blanning, not in the technical sense that you and I might consider it as lawyers, but as the term has been used in the industry for quite a few years. That is what I am referring to when I say leasing, rather than a technical definition of it.

A. There are a great variety of such arrangements, yes.

Q. Did you also find that under these varying arrangements there is a different degree of control exercised by the carrier using the equipment of the lessee?

A. Oh, yes.

Q. I suppose you are familiar, for example, with the situation in the State of Pennsylvania. I understand that in that state because of some of the shortcoming of chattel mortgages and conditional sales agreements it is quite a

prevalent practice there for a person purchasing a vehicle on credit, for example, that the seller retains the title and the buyer has the use of the vehicle under some sort of lease arrangement. Isn't that correct?

A. I am not sure what the situation is in Pennsylvania now.

Q. I believe that is correct. Under an arrangement like that, Mr. Blanning, isn't it true that the purchaser or lessee [fol. 1293] of that equipment would exercise just about the same control over the operation as he would if he owned the vehicle outright?

A. He could, yes. The reason I say he could, there is a situation in Pennsylvania where salesmen of trucks retain the title of the trucks and lease them on a conditional sale contract to truckers and the salesman maintains some control over that truck to protect his property but I don't know the extent to which he maintains control of the operation of it.

Q. In that situation, Mr. Blanning, isn't it true that the seller of the truck retains about the same control over the vehicle as the holder of a chattel mortgage in other states?

A. In one of the situations I am talking about in Pennsylvania, the driver must be approved by the holder of the title of the truck, that is, the salesman. I don't know that that is generally true. I merely know that that is true as to one of those situations in Pennsylvania. I don't know in that case whether the directions given to the driver on the operation over the road are given by the salesman. They are given by the carrier to the same extent as he would give them to his own trucks.

Q. Disregarding for a moment whether the driver is the employee of the lessee or whether he is an owner-operator, you are familiar with the fact, I take it, Mr. Blanning, that in the State of Missouri, for example, one who leases a motor vehicle and has complete control over it for a period [fol. 1294] of as much as 30 days must license that vehicle in his name. Are you familiar with that requirement of the Missouri law?

A. No, just generally and it is somewhat as you stated, but I am not familiar enough with it to state what the law is on that subject.

Q. Under circumstances such as that, that is not only true in Missouri, but it is in a number of other states. When a carrier does assume complete direction and control over motor vehicles for thirty days or longer; and for that reason has to take out the license in his name, isn't it true that for all practical purposes, disregarding now the employment of a driver, that carrier is assuming and exercising about the same control and direction over the motor vehicle as he would if he owned the piece of equipment?

A. As I say, I am not sufficiently familiar with the situation in Missouri on that type of operation to know what control is maintained.

Q. Let's disregard the Missouri law. Maybe that is a point of confusion between us. If a carrier has assumed complete direction and jurisdiction over a motor vehicle in any state under any conditions of the law for a period of 30 days or longer, during that period doesn't the carrier exercise the same control as he would if he owned the motor vehicle?

A. Well, I am not sure I understand you. There are a number of cases where a carrier has control, that is, has [fol. 1295] an exclusive possession of the vehicle for a period of longer than 60 days, and he uses it as part of his regular fleet and he has his own employees driving his vehicles. Where that is true, they are handling them exactly the same as they do owned equipment and the same control exists.

Q. That was the thing I was attempting to bring out. Under those circumstances, Mr. Blanning, isn't it true that ordinarily a carrier using equipment in that manner decorates it and treats it just as if it were a part of his fleet? As a matter of fact, it becomes a part of his fleet, does it not?

A. There are a large number of carriers that have leased equipment painted with their name and no other name and with their own drivers on them and operated as part of their fleet to the same extent as if they owned them. There are a large number of carriers doing that.

Q. Under circumstances of the kind we have just been discussing where the lessee assumes the same responsibility and retains the same control over the leased vehicle as he

would over a piece of equipment which he owns and operates, are you able to point to any of the objectionable practices that are shown in your Exhibit No. 2 that arise when vehicles are leased under an arrangement of that kind?

A. I don't recall off-hand whether there are any of these instances that refer to that type of operation and give any objectionable feature to it. The objection that has been [fol. 1296] made to that type of operation is that it permits a person to go into the trucking business as a carrier without any investment.

Q. That, Mr. Blanning, is no particular concern of the Interstate Commerce Commission, is it? I mean, you have the authority to either issue or withhold the operating rights but as long as the carrier is responsible for the operation of the vehicle and maintains control over the vehicle and does so under the authority that you issue to him, you have no particular interest, have you, whether he has anything invested in those vehicles or not?

A. There are people who think that the Commission does have some responsibility for having the operations conducted by the people who are responsible, not merely legally responsible but able to meet their responsibility. Although we do have insurance provisions, with a $10,000 top limit, and we do have a requirement for a thousand dollars for cargo insurance, that is not adequate protection to the shipper or the general public by itself. If that is all the insurance that is carried and the carrier himself has no assets, there are people who think that the Commission has some responsibility for that condition. Although the Commission can grant or withhold certificates, after a person has got a certificate he can change over, as some of them have done, to the use of leased equipment under their full control as you were speaking of, but having no investment or substantially none.

[fol. 1297] Q. Do you hope by the regulation of the practices of leasing to assure to yourself and to the public that every carrier in the United States will be financially responsible over and above the limits of insurance that they carry?

A. What I hope will happen from this thing and what I

expect to happen from the regulations may be different, but I didn't have particularly in mind in any of these regulations when I drafted them any of the suggestions that have been made to us that the Commission should have some responsibility for seeing that carriers who operate are responsible carriers having an investment in the business and not merely persons collecting a percentage of the revenue.

I am not saying that I endorse that. This order is merely a compilation of suggestions that have been made to me as to means of handling what are considered by some carriers and by some of our field staff as undesirable practices in the industry.

Q. We have another type of situation that we both know exists. The carrier assumes the same direction and control and uses the vehicle much the same as we have been speaking of. But in addition he employs, as an individual contractor or an agent or whatever the relationship might be, the owner of that vehicle to drive it, but retains the same control over the vehicle as we have previously been discussing, where the owner is not employed as a driver. What difficulties arise in the administration of the Motor Carrier Act?

[fol. 1298] A. There are some companies that have owner-drivers with the vehicles under so-called personal lease to the carriers and marked with the carrier's name and no other name, being driven by the owner, where there seems to be the same control as there would be over owned vehicles and as there is over owned vehicles. There are other cases where the same control is attempted, but the fact that the driver can take his vehicle away, if he doesn't like the order he gets, and deprive the carrier of equipment has affected the extent to which the carrier is able to control that driver.

As I say, there are some carriers where we haven't run across a situation of that type and others where we have. The carriers in some cases are not able to discipline the driver who can leave him with his piece of equipment to the same extent they can an employee who can't take the equipment away and who can be replaced.

Q. In the event that the arrangement between the owner-

operator and the carrier under these circumstances provided that the owner-operator was obliged under the agreement to leave the vehicle in the control of the carrier, even though the owner thereof might leave his employment, wouldn't that obviate the difficulty that you were talking about?

A. It probably would. I don't know of any situations like that. If that were the situation, if there were a straight lease of the vehicle for a definite long-term and an em-
[fol. 1299] ployment of the owner as a driver under conditions where that employment could be discontinued without terminating the lease, than the situation you described would be about the same as it would be for any owned piece of equipment, as far as control is concerned.

Q. Under those circumstances, it wouldn't be absolutely necessary that the owner of that equipment be the employee of the carrier, would it?

A. Oh, yes. That would be implied in the fact that the employment can be terminated.

Q. Couldn't he be operating the vehicle as a driver, as an independent contractor, and still have a provision in the agreement that even though he discontinued driving that vehicle prior to the expiration of the term of the lease that it would be his obligation to leave that vehicle in the use of the lessee?

A. I think maybe we are getting into a legal interpretation, but it seems to me it is inconsistent with the thought of an independent contractor and an arrangement whereby the independent contractor can be discharged while his vehicles remain.

Q. What would be inconsistent about it, Mr. Blanning, if you had an independent contract man who had a term of 90 days, and he was obliged to leave that piece of equipment in your use for 90 days? The mere fact that he is obliged to that extent under his contract does not make him any less of an independent contractor, does it?

[fol. 1300] A. I would think so but as I say, that is a legal question.

Mr. Burton K. Wheeler: He would no longer be an independent contractor, would he?

The Witness: It would sound to me as though he wouldn't

be. The words "independent contractor" have had a number of meanings in different court cases and I am not sure what terms you would apply to the type of arrangement you are talking about.

By Mr. Todd:

Q. Mr. Blanning, just taking a specific example, if I own a piece of equipment and lease it to you for 90 days and the agreement provides that I am not to take that away from you for 90 days—in other words, you have complete dominion over that truck for 90 days—the fact that you have that complete dominion over the vehicle doesn't mean that I am your employee and not an independent contractor, does it?

A. I would think so, yes.

Q. You would?

A. Yes.

Q. Mr. Blanning, in addition to the two types of lease operations that we have been discussing, you also, of course, recognize that there is in the industry what is referred to by most carriers as the "wildcatter", or itinerant trucker. Is that not correct?

A. That is right.

Exam. Lawton: Is that the same as a gypsy?

The Witness: I think in my testimony I used the word [fol. 1301] "gypsy." It is the same thing as you are referring to, I believe.

By Mr. Todd:

Q. In other words, he is the owner of a piece of equipment which he drives and he has no operating rights and is not under any long-term arrangement with any authorized carrier but simply takes a load from one point to another as he may find it. Isn't that pretty much the situation?

A. That is correct. There is the variation, sometimes, that the gypsy does not own his equipment, but is an employee of a gypsy. Sometimes a gypsy owns several trucks and hires people to drive some of them.

Q. With respect to the gypsy, when he is not operating

under the authority of an authorized carrier, either common or contract, does the Commission have any jurisdiction over the operation of his vehicle, either from a safety standpoint or any other standpoint?

A. We have no jurisdiction over the gypsy except during the time that he is operating under the rights of a carrier holding authority from us.

Q. That is, for example, if an authorized carrier in St. Louis employs a wildcatter to take a load for him from Chicago to St. Louis and at St. Louis the lease terminates, the Commission's jurisdiction over the gypsy terminates at St. Louis, is that not correct?

A. That is correct.

Q. And if while he is in St. Louis casting about for [fol. 1302] another load he has an accident, the Commission has no assurance that he has any insurance on his vehicle protecting the public against an accident such as that, is that correct?

A. That is correct.

Q. In your opinion as Director of the Bureau of Motor Carriers, do you consider that a desirable or an undesirable situation?

A. We consider it undesirable that there should be vehicles that are used in service subject to our jurisdiction which have these intermittent periods where there is no protection of the public for their operation. However, I might call attention to the fact that there have been courts that have held that the person who gave them the load and put the gypsy there is liable for accidents which occur after they have completed their service for him. I don't know that that is generally upheld. I imagine the insurance companies would fight any suit of that kind. The situation where it is not clear that the public is protected is undesirable, in our opinion.

Q. When this gypsy arrives in St. Louis with his load that he has transported for the carrier operating out of Chicago, does the carrier for whom he has operated ordinarily—and this would be under some obligation, as a matter of fact—take from the gypsy the driver's log that he has kept on the trip from Chicago to St. Louis?

A. He is supposed to have the driver's log for a week at

the time he employs the driver. I might say that is not [fol. 1303] common practice. Our rules are not clear as to the method in which he will get the log. In practice, it is not done. The gypsies do not usually keep logs when they are not operating for hire. They frequently don't when they are.

Q. Isn't it true that this gypsy that we are discussing here may have kept his log from Chicago to St. Louis and then at St. Louis gone to another carrier for a load? We will say he has used up eight hours of his time going from Chicago on down to St. Louis. He could go to another carrier for a load and that second carrier, whom we will call Carrier B, and who has a load going from St. Louis back to Chicago, would have no way of ascertaining whether the gypsy had had his ten hours rest or not?

A. Normally he wouldn't. The only way he would have had would be to inquire and take the gypsy's word for it. Some of the carriers have such a provision, that the person who employs the gypsy must find out whether the gypsy has already had the required rest or whether he has enough time under the regulations to complete the trip they are going to put him on.

In practice, they can do it only by taking the gypsy's word for it. The general practice is not even to inquire.

Q. Do you, in the administration of the Motor Carrier Act, consider that a desirable or an undesirable situation?

A. We consider it undesirable. There are advantages in the use of gypsies. As to whether the advantages out-[fol. 1304] weigh the disadvantages is the matter we are hoping the Commission will decide here.

Q. That wasn't my question, Mr. Blanning. I am asking you not whether you consider the practice of using gypsies on trip lease is desirable. I am simply asking you if you consider it desirable that from the standpoint of administering the Motor Carrier Act the user of a gypsy is not in a position to determine, certainly, whether such gypsy has had his required rest or has worked his allotted time under your safety provisions.

A. We consider it distinctly undesirable and a handicap to the safety program which we are trying to have followed by carriers.

Q. Supposing with our gypsy friend, whom we have been discussing, when he gets into St. Louis he knows of a shipper there who usually has freight going back to Chicago and with the identification plates of Carrier A who sent him out of Chicago he goes over and picks up that load from the shipper and transports it on into Chicago without ever contacting any certificated or authorized carrier and is thereby more or less transporting property on his own as a "for hire" carrier. Does the Commission consider that a desirable or undesirable situation?

A. Where the thing occurs that you have described, we consider it undesirable.

Q. Do you know from your study of the leasing problem whether that actually happens?

[fol. 1305] A. Oh, it happens in a number of cases. Normally, shippers will not turn over property to a carrier without some billing and the gypsy frequently doesn't have the bills. However, there are a number of cases where gypsies pick up freight and where the shipper thinks he has shipped it by a carrier who has used that gypsy and the gypsy keeps the entire revenue and doesn't report it. The carrier whose service he is presumably in doesn't know of the trip.

Q. Is it practical from an administrative standpoint to stop that practice under the present law and under the regulations of the Interstate Commerce Commission as they now stand?

A. That practice is now illegal. The carrier is operating unlawfully when he is doing that. To catch them would require a much larger police force than there is any possibility of our Commission getting appropriations for. I am not even sure that it would be desirable to spend that much money to prevent the type of operation you are talking about. We are not able to handle that situation under our present law and regulations with the staff we now have.

Q. Is it one of the purposes of the various proposals that the Bureau of Motor Carriers has made to the Commission to remedy that condition?

A. The proposals, all four of them, if any one of the four is put in as proposed, would greatly handicap an owner-driver, or a gypsy, in engaging in that type of operation.

[fol. 1306] Q. Now, Mr. Blanning, if you will I would like you to turn to your Exhibit No. 2. We will start at page 8, paragraph 12. I am not going to read each one of these to you. I just refer you to them and ask you now if the practice that is referred to there in paragraph 12 would not be corrected if motor carriers were required to discontinue the use of gypsy operators on a trip-lease basis, the type of operation you and I have just been discussing?

A. Well, if they are required to discontinue trip leasing, it would be. A gypsy normally is considered a person owning a truck and not having any rights. That particular instance referred to there is where a carrier may have some rights. It refers to carriers both with and without rights, but not having rights to the point they want to go, that run over somebody else's route under a theoretical lease and the billing of the carrier over whose route they are running.

Q. That particular instance, I believe, Mr. Blanning, doesn't indicate that the owner of the motor vehicle has any operative rights?

A. Yes, it starts out by saying that the manager said that any carriers who didn't have authority to make deliveries to some point, and so forth.

Q. I stand corrected. Excuse me. Now, I would like to direct your attention to paragraph 17 on page 10. Would the undesirable practice therein described be eliminated if [fol. 1307] the practice of using gypsies on a trip lease basis were prohibited?

A. No, not if you can find the gypsies, because that also was not a gypsy. That was an authorized carrier who sent one of his tractors to Cleveland and then, in order to make some money on the way back, leased it to other persons and in that particular case the accident occurred when it was not leased to anybody.

Q. Wasn't the equipment there that was being used, Mr. Blanning, that of an owner-driver?

A. The report didn't state——

Q. I mean the tractor, at least. I believe the facts are that the tractor was owned by the owner-driver and was on a trip-lease basis and that the trailer belonged to a carrier. Isn't that correct?

A. That is right. It refers here to the owner-driver as the person driving the tractor, yes.

Q. So that under those circumstances if the use of the gypsy under a trip-lease basis was eliminated, that type of situation wouldn't arise?

A. Well, that would depend to some extent on your definition of gypsy. It is my recollection from the incident described here that the owner of the tractor was not what is normally known as a gypsy, but his vehicle was leased to a carrier who normally used it in Texas and who wanted to get it back there. The entire arrangement was made for the purpose of getting that tractor and trailer back to the service of the original lessee.

[fol. 1308] Q. It is difficult for us to tell, Mr. Blanning, from just these excerpts what the actual situation was, but one of the statements in this case, referring to line 5 in paragraph 16, says, "If no such lease could be made, the owner-driver was to operate the distance empty, not under the lease."

Now, it couldn't be a continuing lease if it terminated while he was out on the road, could it?

A. Oh, no, it wasn't a continuing lease.

Q. So that from these facts, at least, it is a gypsy operation?

A. Would be of the type of operation that is conducted by gypsies, yes.

Q. All right. Referring to paragraph 20 on page 11, wouldn't that type of operation be eliminated if the use of the gypsy on a trip-lease basis were discontinued?

A. No, this operation is different from that. This is an operation where a carrier having rights over several routes has given a person who owns a truck the privilege of soliciting freight and hauling it back and forth over that route. He is to pay five per cent of his revenue to the person who owns the rights. He has a number of routes and he has a number of persons, or a different person, operating over each of the routes. But those are not gypsies. Those are persons who are operating regularly back and forth over the same route.

Q. Then in effect what that certificate holder has done there is to lease to the owner-operators his operating rights,

[fol. 1309] isn't that correct? Or to the owners of the trucks?

A. Well, we have had complaints from the competitors who want us to prosecute this man for leasing his rights without our approval but the paper arrangements are proper and the billing is done in the name of the carrier who has the rights. The vehicles also are under lease to the person who has the rights. The paper work is all complete. It would be a difficult case to prove that the man is not performing a bona fide operation.

Q. But under the statement of facts that you put in here, there would be no difficulty in proving that the carrier has violated Section 5 of the Act by leasing his rights without prior authority from the Commission, isn't that correct, Mr. Blanning?

A. No, there would be difficulty.

Q. All I have to go by is what you say here. Under this very limited statement of facts, isn't that true, without regard to the actual facts?

A. No, there would be difficulty. This situation as described there exists in several hundred places that we know of in the country.

Q. You mean, Mr. Blanning, that it is your opinion that if you could go into court and establish that this carrier has discontinued operating as a carrier and has permitted other people under an oral arrangement or any other kind, written or oral, to use his rights for 5 per cent of what they take in, that you couldn't establish that as a violation of [fol. 1310] Section 5 in that a man has leased his rights without getting authority from the Interstate Commerce Commission?

A. I think we would have considerable difficulty in showing he leased his rights because if he had leased his rights the person operating would be using his own billing. In this case they are using the billing of the authorized carrier.

Q. That is what I was trying to get you to make a distinction on, between the actual facts and the facts that are stated in paragraph 20. I am not passing upon those because, as I say, I don't know what they are. All I am talking about are the limited facts you have put in paragraph 20.

A. Maybe that hasn't described the practice as com-

pletely as was intended. The situation is as described there. He has permitted somebody else to use his rights.

Q. And if you could prove that, Mr. Blanning, you could prove a violation of Section 5, isn't that correct?

A. Oh, yes, if we could prove that.

Exam. Lawton: Mr. Todd, are you going to ask him more of these examples?

Mr. Todd: Yes, sir, I am.

Exam. Lawton: If it is your opinion that these examples are covered by existing law, can't you show that through a witness or argument of the point on brief? There are a lot of other people here who would like an opportunity to cross examine.

[fol. 1311] Mr. Todd: Mr. Examiner, if you don't believe that my examination is of any importance to the issues in the case, I will try to condense it.

Exam. Lawton: I don't want to curtail it, but I wish you would condense it as much as you can to give other people an opportunity to also cross examine. I am sure you can cover many of the points that you have made on brief.

Mr. Todd: I will do my best to do that, Mr. Examiner. I have tried to give this thing a good deal of thought in preparation of my cross examination. I hate to scuttle it all now, but I will try my best to condense it.

By Mr. Todd:

Q. Mr. Blanning, isn't it true that if the practice of trip leasing gypsies were eliminated that a large number of the undesirable practices which your have set forth in your Exhibit No. 2 would be eliminated?

A. Yes.

Q. And that is a substantial percentage of them, isn't that correct?

A. It is a substantial percentage. A large number of the abuses that are cited here are due to the use of the gypsy operator.

Q. For example, wouldn't the practice that you described in paragraph 28 be eliminated?

A. Yes, that is a gypsy arrangement almost entirely.

Q. And the one described in 29 and 30 would be eliminated, isn't that correct?

[fol. 1312] A. That would depend on your definition of gypsy. Neither 29 nor 30 are limited to the use of gypsy trucks. They are truckers who are not normally called gypsies. Both people that are called gypsies and others hauled under the practices.

Q. But they have to be able to do it on a trip-lease basis in order to operate in that manner, isn't that correct?

A. Oh, yes. I was distinguishing between trip-lease and gypsy. Of course, if trip-leases were abolished both of those would be discontinued.

Mr. Todd: Mr. Examiner, I have managed to consolidate that a good deal.

By Mr. Todd:

Q. Going on to your Exhibit No. 3, in preparing this exhibit, Mr. Blanning, did you make any effort to determine how many motor carriers engaged in the practice of using gypsies on a trip-lease basis and how many didn't as distinguished between those who leased vehicles over a period of time from owner-operators?

A. Yes, the one table here, Table 5, I believe it is, gives the number of carriers by classes and regions and the number of leases.

Mr. Burton K. Wheeler: Can you speak a little louder?

The Witness: Table 5 gives the number of carriers by classes and regions and the number of leases by the carriers divided as between long-term, round trip and one-way and also divided as to whether the carrier leases his vehicles to others or leases vehicles from others. The last [fol. 1313] three columns are where the carrier is a lessee. I have Regions A, B, C, D, and E, and all of them are divided the same way. The last three columns describe the number of leases divided as between long-term, round trip and one-way.

By Mr. Todd:

Q. That doesn't indicate, for example, in Region A, intercity common carrier Class I, general commodities, whether one carrier out of the 252 studied used 84,806 one-way trip-

leases, or whether those one-way trip-leases were divided more equally between the 252, so there is no way of determining the number of carriers who used the trip-lease method of operating?

A. No, except that that 252 does not include any of the carriers who don't lease at all.

Q. That is correct, but there may be a substantial number of the 252 who do nothing but lease vehicles from others on a long-term basis, isn't that correct?

A. That is right. We have the information on that. The information on this exhibit, however, is merely the information we could get tabulated in time for this hearing. I might call attention here to the fact that that long-term lease as shown on this exhibit does not necessarily mean an exclusive lease. There are a number of leases by carriers where they lease a vehicle for what they call a long-term lease, but they allow the owner to use it for his own purposes at times when it is not under lease to the carrier [fol. 1314] or in the service of the carrier. The only tabulation I have on that is on Region C. I just took this off to show the effect of it. On Region C of this 9,014 long-term leases, the number that were not exclusive, that permitted the owner to use the vehicle for some other purpose, was 494, 5½ per cent. That is, 94½ per cent were exclusive. I am reading from Region C, Table 5, the third column from the right. It has 9,014. That is the number of long-term leases. 31 of the carriers had long-term leases that permitted other use and the balance had exclusive leases. But in the case of the 26 household goods carriers who had leases, ten of them permitted the other use of the vehicle and of the 1792 long-term leases, 1455 of those leases permitted the owner to use the vehicle during the term of the lease, which is, I think, 81.2 per cent. I haven't had that made out for all of them, but I just put that in here to explain that the figure on the long-term lease would not necessarily mean exclusive possession during that term.

Q. That would indicate that generally most of your long-term leases do give exclusive possession with probably the notable exception in the household goods carrier industry, isn't that correct?

A. Yes, the general commodity haulers, if all the rest

are like this one example, in 95 per cent of the cases have exclusive use during the long-term lease. In the case of household goods carriers, the figure here is about 20 per [fol. 1315] cent of the leases that are exclusive use and 80 per cent that are not.

Q. Do you have any information, Mr. Blanning, on the number of carriers who use the gypsy under a trip-lease arrangement?

A. The number of carriers who use them?

Q. Yes, sir.

A. I don't have that tabulated. You know on that questionnaire we sent out we got a lot of information, in fact, I think all the information that is available, but the information has not all been tabulated and this we consider the most important and we were working up until the day before we sent it out to get this much out. So I don't have any information tabulated on that.

Q. Would it be possible for you to get any information on that point?

A. I believe not in time for this hearing. I am hoping to have all that information tabulated some time.

Q. Could you get it for a late filed exhibit, Mr. Blanning?

A. It might be possible. I wouldn't want to guarantee it because it takes a lot of people, a lot of time and money and whether we would want to or could put that much money into it I am not sure.

Q. Mr. Blanning, you have said that the household goods carriers engage in this practice of permitting, under a long-term lease, the use of equipment by the owner on his own behalf more generally than do the other types of carriers. [fol. 1316] How do you account for that distinction in that particular instance?

A. Well, the household goods carriers generally have agents, so-called, scattered through the country, especially the larger ones. Those agents lease their trucks to the carrier holding authority on long-term bases. They are used by the carrier to whom they are leased only when there is a shipment going outside of the area that the person who owns the equipment, usually a local household mover, has rights. So normally that vehicle is used in the service of the owner, who is normally a furniture warehouse-

man or household mover in a small area and only occasionally takes a trip on the rights of the person to whom it is leased. I am using the word "leased" loosely, but that is the word they use.

Q. That is brought about by reason of the fact that in the household goods carrier industry there are these large van lines which the Commission has permitted to establish agents throughout the country for the handling of their business, is that correct?

A. Well, when you say the Commission has permitted, we haven't stopped them. There are ones who have gotten broad rights from the Commission and who have appointed agents throughout the country who own trucks and whose trucks are used by these household movers holding certificates.

Q. Getting back once again to the number of persons using gypsies under a trip-lease basis, Mr. Blanning, could [fol. 1317] you give some further consideration to the possibility of furnishing that information and let us know whether it would be available, please?

A. I will see how much time it will take and if it is at all possible I would be glad to have it in the hearing. In fact, I would be glad to have in here any of the information that we have gathered. I will make a note of that and see what time it will take.

Now, what you want is the number of carriers who use trip-leases as distinguished from the breakdown here by combines them with those who use leases of various kinds?

Q. That is right. And that is the only place in this exhibit No. 2, I take it, where you attempted to make a distinction between the one-way trip-lease and the continuing lease arrangement?

A. That is right.

Exam. Lawton: How much time would the preparation of an exhibit embracing that information take?

The Witness: It depends on the extent of breakdown. I believe we could get it, just a total for the whole United States, in probably less than a week. To make a breakdown to compare with this Exhibit 3, Table 5, would probably run a considerably longer time.

Exam. Lawton: 15 days?

The Witness: I couldn't even give an estimate. We spent about four months making up these exhibits. I wouldn't [fol. 1318] be able to estimate it now. I might be able to tell you this afternoon how long it would take.

Mr. Brodsky: If it would be of any value, Mr. Examiner, we would like to have it broken down by commodities in accordance with the schedule that is in the exhibit now.

Mr. Pou: May we inquire of Mr. Todd if he thinks it is necessary for his purposes to have it broken down by regions or would the type of breakdown that Mr. Blanning mentioned and which might require only a week be satisfactory?

Mr. Todd: The type Mr. Blanning suggested in the first place would be satisfactory for me, Mr. Examiner, because it just seems to me that it is an essential in this case to know how wide-spread is the practice that evidently has given the Bureau of Motor Carriers its greatest concern. That is all I want to know. If you had those figures, you could just testify to them and it would suit me.

Exam. Lawton: In regard to the request made by Mr. Brodsky, how much of a task would that be?

The Witness: To break it down as it is now broken down in Table 5—you will notice there is a whole page of headings—would probably take at least a month. I believe Mr. Brodsky would be satisfied if we merely combined the six commodities there without breaking it down into the local, common, inter-city and so forth.

Mr. Brodsky: That is right.

[fol. 1319] The Witness: So that six breakdowns, covering only totals for the whole United States, would meet your purposes, would they not?

Mr. Brodsky: I would like the figures broken down for the household goods carriers as a group. I wouldn't be concerned about the breakdown as to the other carriers. They could be grouped together.

The Witness: As far as you are concerned, it would be household goods carriers and others for the United States as a whole, one figure for the United States as a whole?

Mr. Brodsky: Household goods carriers and others for the regions that you have now enumerated.

Mr. Ellis: I would like to suggest, Mr. Examiner, that if

that is going to be done I think it very essential that there be a breakdown between common and contract carriers to show whether the use of trip leasing is more prevalent among common carriers of commodities generally or contract carriers.

Mr. Todd: I think that would be a very good idea, Mr. Examiner.

Mr. Eldred: You had better get the entire information.

Exam. Lawton: Let's have all the suggestions so we will get the exhibits as complete as possible. Would that be too much of a burden?

The Witness: I can let you know this afternoon how long it would take to do it completely or any part of it.

[fol. 1320] Exam. Lawton: We will not discuss that any further at this time. Do you have more questions, Mr. Todd?

Mr. Todd: Yes, I have, Mr. Examiner.

By Mr. Todd:

Q. Mr. Blanning, I would like you now to refer to page 7 of your Exhibit No. 2. With particular reference to those practices that you have put under the heading of extensions of operations, aren't there a number of examples that are given there that are brought about by reason of the carriers using a theory of trip-lease and interchange that makes it possible that you consider it to be an extension of operating authorities?

A. Practically all of those cases that involve them individually involve what the carriers consider to be a trip-lease of their vehicle and an interchange of freight with some other carrier.

Q. I take it you have no particular objection to the interchange of vehicles then between carriers as long as the responsibility for the vehicle and the control of the vehicle is well established? I mean, if two carriers can get together and perform a free service that is more desirable to the shipping public you have no objection to that as long as the proper responsibility and control is established, isn't that correct?

A. No, I wouldn't say I have no objection. Whether the objection is outweighed by the advantages, I am not positive

about yet. But there is objection to that practice where it is used to put a new competitive service into or over a route, where there is a one-factor operator already there. That is, [fol. 1321] what I mean is where there are carriers operating over a route furnishing carriers between two cities and a new competition gets in because a carrier having rights part of the way leases his equipment, loaded equipment, without interchange of lading to another carrier, putting a new through movement in there without change of lading, there are objections to it.

Q. You would prefer that those two carriers physically interchange the freight between these two points, is that right?

A. No, we would prefer that they don't handle it between the cities. Well, that is putting it too strongly. Take the situation where there are two carriers running between, we will say, Reading, Pennsylvania, and Atlantic City, authorized carriers, and hauling the freight between those cities. Some carrier having rights to Philadelphia makes arrangements with a local carrier who has rights only between Philadelphia and Atlantic City, by which the first carrier runs his trucks over the second and starts into a through competitive service with the two carriers already operating with rights. There are objections to that practice.

Q. But under the proposal that is here before the Commission, under a proper plan it would be possible to perform that same service except that the driving carrier there would have to put his tractor under the originating carrier's trailer, isn't that correct?

A. Under two of the original four proposals, that would be true.

[fol. 1322] Q. I note, however, that you restrict that proposal to common carriers, and wouldn't afford the same privileges to the contract carrier. What is your purpose in so restricting it?

A. I think that is done on the theory which I believe the Commission has adopted that contract carriers cannot interchange with each other. As they cannot interchange, it would normally follow that there would be no advantage in the vehicles running through without change of lading.

Q. That brings up a question, Mr. Blanning, in my mind as to just exactly what you mean by interchange. Let's take some examples and that perhaps would clarify it. Supposing Carrier A, as you say, has operating rights from Reading to Philadelphia and B from Philadelphia to Atlantic City. Do you consider it an interchange of equipment where A would bring a load into Philadelphia and turn his trailer and load over to B for delivery to Atlantic City? Do you consider that an interchange?

A. No, that is not interchange. That wouldn't be interchange.

Exam. Lawton: How was the shipment billed?

Mr. Todd: That is what I am trying to get at, whether the billing has anything to do with it.

By Mr. Todd:

Q. Mr. Blanning, do you think in order to be an interchange there has to be some sort of a billing arrangement between the two carriers, whether it is done on a through billing or at local rates?

A. I am not clear. It would have to be local rates. As in [fol. 1323] the case of a contract carrier?

Q. No, sir, I am talking about any carrier.

A. Interchange is permissible under the Commission's regulations only between common carriers.

Q. Then we will put it between common carriers. I don't agree with you on that interpretation in the first place. I know of no formal decision of the Interstate Commerce Commission that has said that two contract carriers cannot operate as we have just described it now. What I am trying to find out is what you mean by interchange.

A. Well, I wouldn't want to go into a discussion here as to what a contract carrier can do.

Q. I am not asking you to do that, Mr. Blanning. All I am asking you to do is answer my question, whether the operation just described in your opinion is an interchange as you have used that word in your proposed regulations?

A. Where is it in the regulations? I have forgotten. As used there, it was intended to cover any situation where the

vehicle of one carrier went over the routes of another carrier without change of lading.

Exam. Lawton: In other words, it could move on a through bill of lading?

The Witness: It wouldn't necessarily move on a through bill of lading under this.

Exam. Lawton: It would not?

[fol. 1324] The Witness: It would not. Any arrangement by which the truck of one carrier continued over the rights of another.

Exam. Lawton: One of the conditions, as I read it, under E, is that traffic move on a through bill of lading issued by the originating carrier.

The Witness: That is right, one of the rules by which they can have interchange is that there be through bills of lading. The interchange alone didn't have anything to do with anything except the vehicle. One of the conditions under which you can do it is there must be a through bill of lading.

Mr. Burton K. Wheeler: I am trying to figure out in my own mind just what the objection could be to that. If there is one common carrier from one place to another and you come to the exchange or if you carry it through with another common carrier, what is the real objection to it?

The Witness: It is permissible under this rule to interchange the trailers. The objection to the interchange of power equipment is because of the practice that has grown up by which a carrier will have rights to, we will say, the border of Indiana and no further and another carrier has a route that runs from the border on.

The first carrier will pick up freight at a point he is authorized to, take it to the point where he contacts the other carrier's route, and keeps on going without even pulling out a pencil and making a note, and makes delivery to a [fol. 1325] point on the other carrier's route. That is the establishment of a service which has never been presented to the Commission for approval and very frequently is in competition with carriers who have applied for and received the approval. In fact, there are cases where a man has applied for the right to do that and has been turned down. Then after being turned down he makes arrange-

ments with a carrier by which he can perform the service he has been turned down on by giving a percentage of the revenue to the carrier whose rights are being used.

Mr. Burton K. Wheeler: The real objection would be, I suppose, on the part of the one carrier. We will assume there are two carriers. One of the carriers would object to it because of the fact that it involved unfair competition to him. Is that the idea?

The Witness: Unauthorized competition.

By Mr. Todd:

Q. Getting back to our contract carrier discussion, Mr. Blanning, let us consider a situation where that contract carrier A has a contract with B to transport the property from Louisville, Kentucky, to Chicago, Illinois, and contract carrier C has a contract with the same shipper, B, to transport property from Chicago, Illinois, to Madison, Wisconsin, and they both have their separate individual contracts. Do you consider it an interchange where A will bring the load from Louisville to Chicago and at Chicago take his tractor out from underneath the trailer and C in turn will put his tractor under that trailer and make de- [fol. 1326] livery to Madison, Wisconsin, both A and C, the two contract carriers, collecting their charges from the shipper, having a contract with a shipper, and no arrangement on rates between the two carriers at all. Do you consider that to be an interchange?

A. As used in this order, that was included in the meaning of the word "interchange".

Q. And you would prevent two contract carriers from performing a service of that nature?

A. I don't know what you mean. Do you mean if this order were adopted?

Q. Your proposal would.

A. If this order were adopted and any of the other orders were adopted except one, that would be prohibited.

Q. Do you consider it an interchange if instead of carrier C pulling carrier A's trailer with his tractor they would take the lading off the trailer at Chicago and reload it into C's trailer and take the movement on to Madison, Wisconsin? Do you consider that to be an interchange?

A. You mean interchange of equipment?

Q. Yes.

A. No. By the way, interchange of equipment is defined in the rule. It is the physical exchange of equipment between authorized carriers at a point which both carriers are authorized to serve.

[fol. 1327] Q. So that if these regulations went into effect A and C could not conduct the operation as we first discussed it, but could conduct it as we discussed the operation the second time, that is, where they made a physical transfer of the lading from one vehicle to another?

A. Well, as far as these regulations are concerned, they could. Whether or not they would be allowed to under the law or under the Commission's interpretation of its permits, I am not sure. But these regulations would not change it as to the situation where there is a change of lading.

Q. Do you know of any Commission interpretation of the law or any of its regulations which would prohibit the second operation that I described?

A. It would depend on the circumstances, but that has nothing to do with these regulations, as I see it.

Q. I think it does, Mr. Blanning, because the Bureau or somebody is proposing—I have had a difficult time figuring out who—some regulations. It seems to me it is somebody's job to show that they are practical and that they are going to accomplish something. Now, I want to know whether you consider it practical to impose a regulation on a group of carriers that will simply make it necessary for them to physically move lading from one trailer to another?

A. It might be.

Q. You think that might be practical?

[fol. 1328] A. Yes, because these regulations as now drafted apply to the situation which a single truck is used. It is only trailers that can be interchanged under these regulations.

Mr. Burton K. Wheeler: Mr. Blanning, let's see if I understand you correctly. If this went into effect, would it be a violation of the rules if the trailer was exchanged? For instance, we will say carrier A brought it to a certain point

in Philadelphia and then carrier B took the trailer on his authorized route thence to Atlantic City.

The Witness: That would not be a violation if they were both common carriers.

Mr. Burton K. Wheeler: That is what I mean.

The Witness: That is right.

Mr. Burton K. Wheeler: That is what I was trying to bring out.

By Mr. Todd:

Q. But if they were both contract carriers, it would be a violation?

A. That is right.

Mr. Burton K. Wheeler: Why the difference?

The Witness: The difference is a difference in concept as to the function of a contract carrier and a common carrier and the general tone of the Commission's decisions—Mr. Todd said there is no specific decision and he may be right—is generally that a common carrier serves the public generally and can interchange as provided by law, I mean interchange lading at through routes. There is no such provision for a contract carrier and it is the concept generally that a contract carrier makes an arrangement with a particular shipper to serve that area within the right covered by his permit and doesn't have the general right to serve beyond there by interchange with another contract carrier.

[fol. 1329]

Mr. Burton K. Wheeler: I understood that you couldn't do it with a common carrier and I couldn't understand why.

The Witness: These regulations permit it for a common carrier subject to certain provisions and restrictions as to records and so forth. But they do not permit it as drafted here as between contract carriers.

By Mr. Todd:

Q. Would it surprise you, Mr. Blanning, if I told you that I have a copy of a letter in my file in which one of your field supervisors advised a shipper upon its request that two contract carriers could perform identically the service that

I first described between Louisville, Kentucky, and Madison, Wisconsin?

A. No, since I have a hundred and some people out in the field and they change from time to time, so I don't get surprised.

Q. I might say that he hasn't changed. Getting back to the interchange again, Mr. Blanning, we have, as you know, contract carriers and one will have an operating right from a particular origin point and no rights back. Another may have rights in the opposite direction. Supposing we have two contract carriers, one having operating rights from [fol. 1330] Chicago to St. Louis and another one from St. Louis to Chicago, neither one having operating rights in the reverse direction. Would you consider it to be an interchange if the carrier having the rights out of Chicago took his load to St. Louis and at St. Louis entered into an arrangement with the contract carrier there to bring a load back up to Chicago? Do you consider that to be interchange?

A. It seems to come within the definition. You mean interchange as it would apply in this order?

Q. Yes.

A. It seems to come within that definition, yes.

Q. So you would prohibit contract carriers from eliminating their empty mileage in that way?

A. When you say I would prohibit them, what——

Q. I mean the rules would, excuse me.

A. The first rule prohibits leasing altogether.

Q. This fourth rule that we are talking about here, interchange?

A. In the fourth rule, if it were adopted, that would prohibit the use by a contract carrier of the equipment of another contract carrier under the conditions called interchange of equipment, yes.

Q. Is it likewise true, Mr. Blanning, as between common carriers, if they wanted to perform that same type of operation that they would have to comply with the interchange requirements if your proposal No. 4 went into effect?

[fol. 1331] A. Yes.

Q. So that under proposal No. 4 there would be no trip leasing between any authorized carriers, would there?

You wouldn't consider that trip leasing? It would be interchange of equipment.

A. If both carriers have a right to serve the point at which the equipment is turned over to the other carrier, yes.

Q. Now, I would like you to direct your attention to page 7, paragraph 7, please, Mr. Blanning.

A. Exhibit 2?

Q. Exhibit 2, yes, sir. Of your own personal knowledge, Mr. Blanning, how frequently do you know of the situation described in paragraph 7 coming up?

A. Of my own personal knowledge, of course, it is restricted. Of the cases that have been reported to me by either our staff or complaints from other carriers, the practice is indulged in, I believe, only in two of the districts of the country. I have only had reports from two of the districts of the country. In one district it applies to only two common carriers. Only two common carriers indulging in that type of arrangement. They are both very large common carriers, by the way. They cover a large territory, but I don't think it is a general practice throughout the country for common carriers to give to contract carriers the privilege of running over their routes for a percentage of the revenue.

[fol. 1332] Q. Mr. Blanning, in these particular cases does your report or does any subsequent investigation that your office might have made indicate whether the contract carrier was turning this business over to the common carrier as the agent for the shipper, as permitted by the Commission's decision?

A. No, the cases that are referred to there are cases where a contract carrier is serving a limited region. He has rights only in a limited area. When his shipper has freight going beyond that area, the contract carrier runs his truck over the common carrier's route. Usually the paper arrangements are properly made by the driver at the time he gets to the common carrier's terminal. By the paper arrangements, I mean he gets a voucher and puts it on the truck and signs a lease of the vehicle or whatever arrangement they have. And he pays actually in cash a certain amount of money. There is no collection of the filed rate.

Q. Did you make any search to find out who the shipper paid for this service?

A. Yes. In the cases I am referring to, the shipper pays the contract carrier.

Q. And what does the common carrier collect from the shipper?

A. Nothing. He collects from the contract carrier an amount which theoretically represents the difference between his filed rate and the rental for the truck. Actually it is usually a definite amount in cash.

[fol. 1333] Mr. Burton K. Wheeler: Isn't that a violation of the law itself?

The Witness: It is a little hard to prove that there wasn't a bona fide lease of the truck and a hiring of the driver. When our original Ruling 4 was in effect where the driver had to be an employee of the carrier, which was an interpretation made by the Bureau, we had no difficulty in cases of this kind. But after the Commission and the courts held that he didn't have to be an employee of the carrier, it became more difficult to prove that this was a violation of law, if it is a violation.

Mr. Burton K. Wheeler: It seems to me that the Commission, under those circumstances, could prove it. They could either revoke his permit or they could prosecute him.

The Witness: Well, we can't revoke the permit because under the statute we can revoke a permit only after we have ordered a carrier to discontinue something or do something and he refuses to do it.

Mr. Burton K. Wheeler: Well, you could order him to discontinue it and then if you have got him certainly you could revoke his permit.

The Witness: I am not sure we could order him to discontinue it unless there is a violation of law involved or a violation of some regulation of the Commission and at present we have no regulation. So if he actually leases his truck to the carrier at the terminal and he makes an arrangement by which the carrier is responsible, the common [fol. 1334] carrier is responsible while that is being operated over his route, both to the shipper and the public,

I am not sure there is a violation of law. It would depend on a lot of facts I haven't got.

Mr. Burton K. Wheeler: What you are seeking to do, as I understand it, is determine whether it is an illegal matter or an undesirable practice and make certain rules that will empower the Commission to carry out the law more effectively. Is that correct?

The Witness: Carry out the purposes in the law.

Mr. Burton K. Wheeler: I mean carry out the purposes of the law.

The Witness: That is right.

Mr. Burton K. Wheeler: When you carry out the purposes of the law, you are carrying out the law.

By Mr. Todd:

Q. Mr. Blanning, directing your attention to paragraph 11 of Exhibit No. 2 on page 8, couldn't the Commission correct that particular situation by issuing those men the operating rights that they asked for instead of denying them?

A. Yes.

Q. In your proposed regulations, you would restrict materially the right of authorized carriers to lease their equipment to shippers, in other words, to engage in the truck rental business as it is engaged in, for example, by Hertz Drive-It-Yourself, being an independent carrier and not having any rights?

[fol. 1335] A. That is right.

Q. And you, of course, appreciate that under the interpretation of the law as it stands today you have no jurisdiction over the truck renter who is not a carrier and for that reason you cannot impose those same regulations on the non-carrier truck rental company?

A. That is right.

Q. I suppose you probably recognize, Mr. Blanning, that a number of common and contract carriers, as far as that is concerned, have gone into the truck rental business because of the difficulty and delays which they encountered in processing the applications for new authority with the Commission?

A. I didn't know there were many of them. I knew there were several. Of course, including the subsidiaries of Columbia Terminals, there are a number of those, I believe.

Q. That is correct, yes, sir. Columbia Terminals, being one of my clients, I suppose that is why you called particular attention to that situation. Of all the 77 abuses, however, Mr. Blanning, that you have listed in your Exhibit No. 2, I don't believe there is any undesirable practice that you have listed with respect to the leasing of motor trucks to shippers by truck rental companies, whether they be independent of any motor carrier or not?

A. I don't recall any of them that involve truck rental companies because if it is a truck rental company it is not a [fol. 1336] carrier and anything that they were doing would not be—any undesirable practice would not have been reported. If it is a carrier which is engaged in the truck rental business, it probably would have been and I don't recall all the facts of each of the 77 cases, but I think there are some abuses noted in there and if there are not, I know of a number that result from a motor carrier leasing equipment to a shipper.

Q. I just went over Exhibit No. 2 rather carefully again last night and I don't recall—and it impressed me at the time—that there were any abusive practices set forth in there with respect to carriers leasing equipment to shippers.

A. I don't recall if there are any in there or not. There are a number of such cases that have been reported to me, but whether they are included in here, I am not sure.

Exam. Lawton: We will take a five-minute recess.

(Short recess taken.)

Exam. Lawton: Come to order, please.

It has been suggested that in view of the fact that there are some parties here who desire to introduce testimony and that witnesses are available and they would like to get through and get out of town that the cross examination of Mr. Blanning might be deferred at this time to permit these people to testify and get away. Does anyone have any thought on that?

Mr. Zuby: I have about two or three questions to address

to Mr. Blanning and I intended to leave this afternoon. [fol. 1337] With that in mind, I wonder whether I might proceed.

Mr. Todd: Mr. Examiner, I have just one question that deals with the subject that we were just discussing. I would like to get that over with and then I will be willing to yield to anyone.

Exam. Lawton: All right, proceed.

By Mr. Todd:

Q. Mr. Blanning, in your previous testimony you have indicated, I believe, that the Commission recognizes it has no jurisdiction over truck rental companies as such, but only as to the carriers, isn't that correct?

A. That is correct.

Q. So that I take it that if any carrier who is presently engaged in that business who would organize a separate and distinct company for engaging in a strictly rental business would not be affected by the regulations any more than Hertz or the others who are in business?

A. I am not sure that would be true because of the practice of the Commission in what it calls looking through a corporate veil and if that is intended it should be more specifically stated in the regulations, I would think.

Q. That practice of piercing the corporate veil is ordinarily indulged in by the Commission only when it feels that some subterfuge is present, isn't that correct?

A. It is done only when it can correct the abuse where an abuse exists because of the separate corporate structure.

Q. The Commission doesn't disregard corporate struc- [fol. 1338] tures just willy-nilly, does it, Mr. Blanning?

A. No.

Q. They ordinarily have to find an element of subterfuge present before they indulge in that theory, isn't that correct?

A. I don't know that it would necessarily be subterfuge, but I would believe that under the regulations as now written if a carrier formed a subsidiary and used the subsidiary for the purpose of giving its advantages to shippers who had served as a common carrier, the Commission might

consider that as a violation even though the renting of the truck was by a subsidiary.

Q. In that case, don't you believe the element would be subterfuge, Mr. Blanning?

A. That would probably be true.

Cross-examination.

By Mr. Zuby:

Q. Mr. Blanning, I call your attention to Rule 2, Section B, and ask you whether that provision would be applicable to household goods carriers?

Exam. Lawton: Mr. Zuby, who are you appearing for?

Mr. Zuby: General Counsel for the Independent Movers and Warehousemen's Association.

Exam. Lawton: Isn't that the organization for whom Mr. Hobmann cross examined yesterday?

Mr. Zuby: He is Executive Secretary of the Association, that is correct.

[fol. 1339] The Witness: Did you say 3?

Mr. Zuby: No, B. The provision that has reference to surrender of equipment.

The Witness: That would apply to household goods services.

Mr. Lieberman: I am not certain which rule is being referred to.

The Witness: Rule 2 B.

By Mr. Zuby:

Q. Wasn't that rule basically to serve the purposes of the regular route freight carrier who has terminal facilities at all points where services are being rendered?

A. No, that was fashioned for the purpose of making every carrier who uses vehicles that he does not own establish a definite beginning and ending of the use.

Q. You are familiar, are you not, with the fact that household goods carriers generally do not have terminals or offices at the various points and places to which deliveries are made?

A. That is right.

Q. And how would the rule be applied, obtaining a release or a surrender, upon effecting the delivery?

A. If they used the lease vehicle?

Q. Yes.

A. It would surely be difficult and might be impossible.

Q. That is the thought I have in mind. Again, I refer you now to your Exhibit No. 2 and I observe that you have placed in separate categories household goods as distin- [fol. 1340] guished from carriers falling under the category of general freight carriers. Is that correct, sir?

A. That is correct.

Q. Is that because you recognize a marked distinction in the nature of the services rendered by household goods carriers and specific leasing problems as distinguished from the problems of the regular route freight carrier?

A. Because there is a distinct difference between the practices of household goods carriers and the use of leased equipment or rather in the transportation under the billing of one household goods carrier by a vehicle not owned by him than is generally prevalent in the dry goods carriers.

Q. And does not the problem of agency operations apply to a greater extent in the operation of a household goods carrier than in the regular route freight carriers, generally speaking?

A. Oh, yes.

Q. And also does the element of brokerage enter into the field of household goods carrier operation to a larger degree than exists in the general freight carrier?

A. Brokerage is a word of such indefinite meaning that I am not sure I could answer that.

Q. But in all events, would this be a correct statement to make, that by reason of the peculiar, unique characteristics of the household goods carrier industry, so far as the impact of leasing is concerned, that general regulations may [fol. 1341] not be applicable to household goods carriers as such?

A. No, I wouldn't say that, but general regulations applicable to general freight carriers, restrictive on general freight carriers, would have a greater effect upon household goods carriers' practices as they now exist than they would upon the practices of other types of carriers.

Q. The evils that may exist in the household goods carrier industry may not be present in the general freight industry. I refer to general freight carriers, and conversely, the problems that exist with respect to general route carriers may not be prevalent or exist as far as household goods carriers are concerned. In other words, the thing I am trying to develop is that you can't apply the same medicine or the same rule for a unique industry such as the household goods carrier industry that operates in an entirely different manner, based upon call and demand service, peak periods, seasonal periods, one-way movements and the like, a situation which does not affect or a situation of a similar nature that is not experienced by regular route carriers?

A. Well, as to the first part of your question, that you could not have the same regulations, that isn't necessarily true. As to whether the abuses are of a different type, that is necessarily true. The same type of abuses occur in all classes of carriers. The household goods carriers, because the freight is moved on their billing by persons with whom they have no acquaintance as a frequent practice, and on [fol. 1342] vehicles where the carrier itself generally does not have the same control over the vehicle that is common in dry freight, they will be affected much more by any restrictive regulation on leasing than the dry freight carrier will be. I am avoiding an expression of opinion as to whether they should have a different set of regulations. That is a matter of argument.

Q. As a matter of fact, Mr. Blanning, if leasing is eliminated, as far as the household goods carrier industry is concerned, it would eliminate a substantial number of carriers from the industry, would it not?

A. I don't know how great the number would be.

Exam. Lawton: You mean from the household goods industry?

Mr. Zuby: That is correct.

The Witness: There are some of the national carriers that could operate just as they are doing now if they owned their equipment. There are some who could not. There are some who are now using leased equipment, like Gray Van. The operation is such that it wouldn't be

affected by leasing except they would have to buy the equipment they are now leasing. Other of the national concerns would have to change their method of operation entirely because they are using the vehicles only part-time; about 80 per cent of the vehicles they are using are being used only part-time. 80 per cent of those who are using leased vehicles, I mean. Of course, there are a large number of carriers, including household goods carriers, who do [fol. 1343] own the equipment they now use. How many of them would be put out of business entirely by a regulation that prohibited leasing, I am not sure.

By Mr. Zuby:

Q. Just one other question. Is the practice of leasing to a large measure made necessary by reason of a limited radial base of operation on the part of household goods carriers?

A. I wouldn't say it is made necessary. That is the reason a lot of them engage in leasing, yes.

Q. There would be no substitute as far as carriers who operate from a limited radial base to a number of states. In order to service a return shipment they would have to engage, of necessity, in leasing or operate on a basis of 50 per cent of their tariff rate?

A. That is right. That applies also to the general freight hauler who has rights only one way.

Q. With respect to the general freight hauler, but it wouldn't necessarily be true where the general freight hauler operates between termini on fixed routes and has a usual balanced movement?

A. No, the big majority of dry freight haulers are not regular route carriers operating over regular routes between terminals.

Q. But in all events they operate between fixed points?

A. No, not the majority.

Q. Is it your statement that generally the carriers do not [fol. 1344] operate from city to city? Some may operate over routes and some operate from point to point. In other words, regardless of the route?

A. No, there are a large number of dry freight haulers

with irregular rights and radial operations, the same as household goods movers. There are few that have as large an area.

Q. Their problem would not be as acute as the household goods carrier who has a radial base and is authorized to serve 15 or 20 states operating out of Washington, D. C., or out of any particular city.

Exam. Lawton: That is about the third time you have asked that question.

Mr. Zuby: I want to get that fact clear, if you don't mind.

The Witness: I don't know whether it would be as acute or not. I don't know if the distance would make any difference and there are dry freight carriers who have limited points to and from which they can haul freight and a large area which they serve.

Mr. Zuby: That is all.

Exam. Lawton: Does anyone else have additional questions?

Cross-examination.

By Mr. Ruroede:

Q. Mr. Blanning, is it your opinion that the carrier must own equipment and be responsible?

A. Must own it in order to be responsible? No, he has to be responsible if it is used in his service under the law.

[fol. 1345] Q. No, I believe you said before that was a mark of responsibility of the carrier, if he owned equipment.

A. If I did, I am not sure the context in which I used it was the same. He is responsible to the public and the shipper.

Q. Financial responsibility of the carrier, I am talking about.

A. Oh, having financial responsibility?

Q. That is right.

A. Generally the carrier who has his own equipment has more assets than the carrier who owns no equipment.

Q. Is it a fact that while some carriers own no equipment they have bank balances of better than six figures?

A. I don't know.

Q. Our own company does.

In your Exhibit 3, can a breakdown be made as to whether those carriers are long or short-haul carriers of 300 miles more or less?

A. No, no such figure is gathered on the questionnaire.

Q. Have any of your field men reported to you that many of these trip operators—and I don't like the word "gypsy" because they are all hard working men and have made a very definite contribution to this business—have liability insurance now that covers them for any time that they don't work for a common carrier?

A. I know a number of them that don't. I don't know what percentage do.

Q. Do you know of any that do, Mr. Blanning, or that [fol. 1346] have been reported to you?

A. No.

Q. Well, it is a fact.

Exam. Lawton: Are you testifying, sir? If you are, I suggest you had better do that under oath.

Mr. Ruroede: We can do that later, sir. I am sorry.

By Mr. Ruroede:

Q. So far as the hours of these drivers arriving at a terminal for A carrier and going out at night for B carrier, so far as the eight hours rest is concerned, isn't it a fact that the local union operation takes over the minute a man gets into town?

A. I am not familiar with the union control in the various cities.

Mr. Ruroede: That is all I have.

Cross-examination.

By Mr. Cohn:

Q. Mr. Blanning, with respect to Exhibit No. 3, I wonder if you could advise whether the data in that compilation

takes into account the registration by intrastate carriers, that is, the carriers operating wholly within a state who have registered their rights with the Interstate Commerce Commission?

A. Yes, it contains the records of each carrier who is operating by authority of our Commission, whether under a certificate, a grandfather claim, of which there are about a dozen still left, or registration of a state certificate.

Q. Do you have any separate figures as to the number of [fol. 1347] such carriers?

A. You mean in here?

Q. Not in this compilation, but do you have any independent figures as to the number of such carriers?

A. The number of carriers operating under straight registration?

Q. Yes.

A. Oh, yes.

Q. Are you in a position to give us those figures?

A. Not right off-hand, but I make up a monthly report that contains that so I can give it to you as to the last month.

Q. Would you have any objection to furnishing that information for this record?

A. No.

Mr. Cohn: That is all.

Mr. Johnson: Mr. Examiner, I would like to ask one question at this time because it is in connection with the early part of Mr. Todd's cross examination.

Further cross-examination.

By Mr. Johnson:

Q. Mr. Blanning, if I took this document correctly, you said in substance that in your opinion it might not be necessary that the driver be required to become an employee of an authorized carrier if the contract could provide for some method of changing drivers. In that connection, you said, I believe, that it was in your opinion consistent to have an independent contract where the driver would be discharged [fol. 1348] but the equipment would still remain in the

possession of the authorized carrier. Do I state that correctly?

A. No, I think my statement was that I didn't see how it could be an independent contract if the driver could be discharged and the equipment remain in the possession of the carrier.

Q. That is substantially what I was referring to. My question is this, Mr. Blanning: The contract under which the carriers which I represent operate contains provision that the owner agrees that he will furnish, along with the equipment, a competent and licensed driver to operate it. Now, pursuant to that provision then—and incidentally our contract has been held to be an independent contract—if the driver appears with the equipment and we consider that his condition is such that he should not be permitted to drive, we call the owner and he is required by his contract—and this is true even on the trip basis—to furnish another driver to haul that load. Would you think that under that provision in an independent contract a great many of your objections on that feature would be eliminated?

A. I don't remember if I stated any objections to the feature, but as I get it, we were just discussing whether that is an independent contract.

Q. I am going to assume that it is because our contract has been before the Bureau of Internal Revenue and other people and before the courts and it has been so ruled. So it is established that it is an independent contract. Yet we [fol. 1349] can, if a driver of an owner-operator piece of equipment is on the road and unfit to drive, we can require the owner to put another driver on there.

Exam. Lawton: Now there you are testifying. You are not posing a question for the witness there. You are telling him something that is the practice of your company. I suggest you put that in by direct evidence.

Mr. Johnson: I will ask him the question.

By Mr. Johnson:

Q. Assuming that that is an independent contract, don't you think such a provision gives the carrier control over

the operation to an extent sufficient to satisfy or to eliminate any undesirable practices which you have referred to?

A. Oh, no. When you say eliminate any of the undesirable practices, there are undesirable practices that can be eliminated only by the abolition of leasing altogether and that is the reason that that is one of the proposals in the order.

Q. I understand that.

A. I am not giving any opinion on that.

Q. I understand that, but I am referring to the abuses which you say could be eliminated by requiring the driver to become an employee of the authorized carrier. Aren't those abuses eliminated just as much by the contract provision which I referred to as by a requirement that the driver be an employee?

A. No.

[fol. 1350] Q. For what reason do you say that?

A. There are a lot of things that are undesirable as long as the driver is not an employee, one of which, for instance, has to do with the keeping of driver's logs. You have no control over the driver as such if somebody else can fire him. I don't say you have no control, but you don't have control to the same extent you do over your own employees. Normally in the situation that you are describing—I don't know your company or how you are operating—the driver's logs are kept by the person who employs the men. He is the one who instructs them how to make them out and pays the men and he is the only one who can check the driver's logs against the payroll to determine whether a driver's log has been falsely filed. Those are just some of the things that wouldn't be removed by the type of contract you are talking about.

Q. But there again I have just one more question. In view of that answer, you get back to the proposition you arrived at earlier this morning that that particular thing can be eliminated not alone by requiring the driver to become an employee, but by eliminating and prohibiting all trip-leases?

A. That is right.

Mr. Johnson: Thank you very much.

Mr. Hufnagel: Mr. Examiner, I am F. B. Hufnagel, Jr., of the American Trucking Association, and representing the Private Carrier Conference of the American Trucking Associations.

[fol. 1351] Cross-examination.

By Mr. Hufnagel:

Q. Mr. Blanning, is your proposal aimed at the elimination of the abuses which now exist?

A. I think entirely so.

Q. Do a majority of these abuses result from the use of the gypsies and irresponsible truck owners by authorized carriers?

A. The majority of them?

Q. Yes.

A. Yes.

Q. Do you feel that the abuses now existing in respect to the hours of service provision most frequently result from leasing arrangements entered into by authorized carriers and gypsies or motor vehicle owners who are not carriers as defined by the Motor Carrier Act?

A. I didn't quite get that. Will you read it again?

Q. Do you feel that the abuses now existing in respect to the hours of service provision—in other words, keeping drivers' logs and so on—most frequently result from leasing arrangements entered into by authorized carriers and gypsies or motor vehicle owners who are not carriers as defined by the Motor Carrier Act? That to a great extent follows the question that was just asked you by the previous counsel.

A. If I understand correctly, I think there are more abuses regarding violation of the hours of service regulations that result in the case of use of gypsies than do in [fol. 1352] the case of use of vehicles under long-term lease.

Q. Do you feel that the lack of maintenance of proper records and lack of assurance that drivers do not operate in excess of ten hours a day would be appreciably less where formal leasing arrangements were entered into between responsible carriers?

A. Between responsible carriers?

Q. Between responsible carriers.

A. Oh, yes.

Q. They would be appreciably lessened under those conditions? You apparently feel that equipment now used by authorized carriers is not always maintained in conformity with your safety provisions, and by that I mean equipment owned by non-carriers and leased to authorized carriers.

A. We have Table 6 in Exhibit 3 which shows what we caught on the road, but it doesn't show a distinction between long-term and trip-lease equipment. Our experience has been that where equipment is leased on long-term from owner-drivers marked with the name of the carrier who is leasing it and operating as part of the fleet, it is maintained at least as well as the carrier's own equipment. Where it is used on trip-leases and not as a regular part of the fleet, it is not maintained as well, generally, as the carrier's own equipment.

Q. Then you feel that proper or better mechanical maintenance of equipment could reasonably be assured when trip leasing is entered into on a spot basis between re-
[fol. 1353] sponsible operating carriers?

A. Yes.

Q. Even on a spot basis?

A. Yes.

Q. Now, with regard to insufficient service rendered shippers, you have indicated that in many cases shippers have been denied assurance or service as a result of the independent action and irresponsibility of gypsies and non-carrier owners. In other words, the carrier says he will have a truck there at such and such a time and the gypsy who is going to haul that load decides to go in the opposite direction.

A. I don't recall whether I testified to that, but I think I gave one instance of a situation of that kind occurring. It does occur, not only as to an individual gypsy going some other way, but as to all of the gypsies moving out of the territory during a peak season in the produce market, for instance, leaving the carrier who has been depending on him without the equipment he is accustomed to.

Q. Would this condition to a great extent be eliminated if proper business contracts were entered into between carriers who owned a majority of the equipment they used? In other words, if a carrier who had a relationship with a shipper depended upon another carrier who owned a majority of his fleet, would not this condition be lessened to a great extent?

A. I suppose you are referring to a condition in regard [fol. 1354] to the maintenance of equipment?

Q. No, sir, I am still on the matter of maintenance of service to the shipper, which was the point previously brought out by Mr. Todd, I believe.

A. I presume the situation you are discussing is where one carrier will use the equipment of another carrier to take care of the needs of his shippers, of the first carrier's shippers, when the first carrier doesn't have enough trucks to do it. Is that what you had in mind?

Q. That is right. In place of the use of a gypsy who is irresponsible and where both carriers own the majority of their equipment.

Mr. Earnshaw: Mr. Examiner, might I interrupt to try to clarify one thing we don't get? Are you including private carriers in the expression "carriers" whenever you use it?

Mr. Hufnagel: Mr. Earnshaw, I am including all carriers defined under the Act.

Mr. Earnshaw: Thank you.

The Witness: In answer to your last question, of course there would be a better situation where they are using equipment of another carrier than where they are using gypsies.

By Mr. Hufnagel:

Q. And where the two carriers actually have a business contract?

A. Well, I am not sure what kind of a contract you are talking about so that wouldn't affect the answer.

[fol. 1355] Q. In your exhibits submitted for the record and in your answers to Mr. Todd's questions, you indicated that there sometimes exists a lack of responsibility to the general public, insurance-wise when a non-carrier